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# TRANSCRIPT OF RECO.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 159.

JOHN JOSEPH ALBRIGHT, WILLIAM E. BARKER, AND ANDREW LANGDON, PARTNERS AS LANGDON, ALBRIGHT & CO., APPELANTS,

vs.

SAMUEL EMERY, SR.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

**FILED OCTOBER 19, 1880.**

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1 *Original bill.—Filed July 20, 1877.*

In the supreme court of the District of Columbia.

JOHN JOSEPH ALBRIGHT, WILLIAM E. BARKER, and Andrew Langdon, partners trading under the firm-name and style of Langdon, Albright & Company,

*vs.*

SAMUEL EMERY, SENIOR, SAMUEL EMERY, JUNIOR, Charles C. Sailer, Edward E. Burrough, and John W. Ross and Mills Dean, assignees.

In equity. No. 5697. Docket 17.

To the supreme cour tof the District of Columbia, holding an equity court in and for said District:

The complainants complain as follows:

1. The complainants all reside in the District of Columbia, and sue in their own right and as partners comprising the firm of Langdon,
2 Albright and Company. The defendants all reside in the District of Columbia. They are sued in their own right and as members of the firm of Emery Coal Company, except the defendants Ross and Dean, who are sued as assignees, so called, of that firm.

2. Since January, 1876, the complainants have been engaged as wholesale dealers in coal in the District of Columbia. In and prior to March, 1876, the defendants Samuel Emery, senior, Samuel Emery, junior, and Edward E. Burrough were engaged in business in said District as retail dealers in coal. Their business was then transacted in the name of Samuel Emery, senior, but said Samuel Emery, junior, and said Burrough attended to the business. What were the real relations between the parties in reference to this business the complainants do not know. The complainants sold coal to said Emery, senior, while the business was so carried on in his name.

3. In April, 1876, the defendant Charles C. Sailer became interested in said retail coal business. At that time the name of the firm was changed to "The Emery Coal Company." Said Emery Coal Company wished to purchase coal from the complainants on credit. The complainants, to induce them to do this, were informed by all the defendants that the original firm—Emery, senior, Emery, junior, and Burrough—had made a profit of ten thousand dollars during the previous year, which sum constituted a part of the capital of the new firm, and that in addition thereto said Emery, senior, had advanced in money or its equivalent the sum of about ten ten thousand dollars more, which was to form part of their capital stock. Upon the faith of these statements, and in particular relying upon the said assertions of Samuel Emery, senior, that he owned a large part of the capital of the said Emery Coal Company, the complainants began to deliver coal to said firm, and continued to do so till the spring of 1877.

The defendant Burrough was the active partner in said firm, and he
3 usually gave the orders for coal and signed the checks or notes which were given in payment—the signature being in all cases in these words: "The Emery Coal Company, by E. E. Burrough."

4. Towards the latter part of 1876, the orders from said Emery Coal Company becoming quite large, the complainants requested the defendant Burrough to give them a statement of the assets and liabilities of said Emery Coal Company, and on the first of December of that year said Burrough, in reply to said request, gave to complainants a statement in writing of said assets and liabilities, showing assets amounting to one hundred and twenty-eight thousand dollars ($128,000) and liabilities amounting to seventy-five thousand dollars ($75,000). A copy of said statement is hereto appended, marked "Exhibit A." About the same time the complainant Albright saw the defendant Samuel Emery, senior, and inquired of him as to the financial condition of said firm, and was informed by him that it was doing well and making money. Upon the faith of these representations, and relying in particular upon said representations of said Samuel Emery, senior, in his connection with said firm, the complainants continued to fill the large order for coal which they received from said firm.

5. Between the first day of May, 1877, and the twentieth day of June, 1877, the complainants, under orders received from said firm, shipped to it from Philadelphia four thousand eight hundred and eighty-one tons of coal, the contract price of which was $13,763.54. A schedule of said shipments, showing dates, amounts, and quality, is hereto appended, marked "Exhibit B." Said coal was all shipped at the risk and cost of said firm, as is the custom in this trade, and in the ordinary course of business should have reached the wharf of said firm in Washington, D. C., within ten days after the respective dates of shipment. No complaint was made of any delay in the arrival of any of said shipments, and the com-
4 plainants are informed and believe, and they aver, that it was all received by said firm without unusual delay.

6. For the coal so shipped to said firm between the first day of May and the twentieth day of June, 1877, and for some other small charges against it, said Burrough delivered to the complainants the promissory notes of said Emery Coal Company for sums amounting in the aggregate to $14,728.62. Said notes were so delivered between the 13th day of May, 1877, and the 23d day of June, 1877. They were all signed "The Emery Coal Company, by E. E. Burrough." A schedule of said notes, showing their date, the date of delivery to the complainants, the date of maturity, and the amount of each note, is hereto appended, marked "Exhibit C." In addition to the indebtedness represented by these notes said Emery Coal Company is indebted to the complainants upon a note given for coal furnished by complainants before May 1st, 1877, dated May 14th, for $3,500, which matured on the 16th day of July, 1877, was duly presented for payment and was dishonored, and remains due and unpaid. It also owes the complainant $277.05, represented by a check which it gave them on the 11th of July for $375.00, and the costs of protest thereon. It is entitled to a credit of $43.75. The present indebtedness of said firm to the complainants is therefore $18,561.92.

7. On the 14th day of June, 1877, and for several days afterwards, there was published in the newspapers of the city of Washington, in the District of Columbia, an advertisement purporting to be a notice that the firm of the Emery Coal Company was dissolved on the 16th day of May, 1877. To this advertisement was appended the names of C. C. Sailer, E.

E. Burrough, and Samuel Emery, junior. A copy of it is hereto appended, marked "Exhibit D." The complainants had no notice of this attempted dissolution till it was published in June, and then they had shipped
5 nearly all said coal, and had made contracts for the shipment of the remainder. By whose authority it was published the complainants do not know. Since it was published, and quite recently, the defendant Samuel Emory, junior, has informed the complainants that he is still a member of said firm. On the 14th day of July, 1877, the complainant Barker asked the defendant Burrough if the note for $3,500, which matured on the 16th of that month, would be paid, and was informed by him that he did not know, and said Burrough then added, "I don't know what we will do; we may stop." Referring then to all the notes above described held by the complainants, said Barker asked said Burrough what the complainants should do, and said Burrough replied "You can hold them all," meaning that all the members of the firm of the Emery Coal Company were liable on said notes.

8. The defendant Samuel Emery, junior, is the son of the defendant Samuel Emery, senior. The defendant Burrough is the son-in-law of the defendant Samuel Emery, senior. The defendant Sailer is the father-in-law of the defendant, Samuel Emery, junior. While the defendants, or some of them, were doing business as aforesaid under the firm-name of Samuel Emery, and afterwards, while they, or some of them, were doing business under the firm-name of the Emery Coal Company, the defendant Samuel Emery, senior, was the only one of the defendants who had the means or the credit required to enable them to carry on the business. When the Emery Coal Company was formed, and afterwards, the defendant Samuel Emery, sr., informed the complainants that it owed no considerable sum of money to any one except to these complainants. The real estate occupied by said firm during the past year comprises a wharf in Washington City, on the Potomac River, which it leased from one Van Riswick, and a coal yard at the corner of B and First streets northwest.
The land covered by this coal yard complainants are informed and
6 believe is owned by the defendant Samuel Emery, senior. Until a short time ago it was occupied by the Emery Coal Company under some arrangement with said Emery, the nature of which is to the complainants unknown. Recently the defendant Burrough has intimated to the complainants that the coal yard was given up by the Emery Coal Company several months ago to the defendant Samuel Emery, senior. Of the large quantity of coal that has been delivered by the complainants to the Emery Coal Company since the first day of May, 1877, about two thousand tons, worth at the market price about eight thousand dollars, has within a few days last past been hauled from said wharf to said coal yard, and is now in the keeping of the defendant Samuel Emery, senior.

9. Down to the 14th of July, 1877, all the defendants had given the complainants to understand that the complainants were the only creditors to whom the firm of the Emery Coal Company was indebted to any considerable amount. As late as the 16th of June, 1877, the defendant Burrough informed the complainants that they were the only creditors of said company—that it owed nothing to any one else. On the 14th of July, 1877, the defendant Burrough informed the complainants that the defendant Emery, senior, is a creditor of the Emery Coal Company to the

amount of eight or nine or ten thousand dollars; the amount was expressed very indefinitely. On the 17th of July, 1877, the defendant Emory, senior, himself made a similar statement to the complainants, and claimed that this money the firm owed him for the capital he had advanced, and that he is not a member of the firm. This was the first intimation the complainants had from any source that said Samuel Emery, senior, claimed to be a creditor of the Emery Coal Company. On the 16th of July, 1877, the day the above-mentioned note for $3,500 matured, the complainants received a letter, of which the following is a copy:

7 WASHINGTON, 7, 16, '77.

LANGDON, ALBRIGHT & CO.:

GENTS: I cannot do anything in note due to-day. Mr. Samuel Emery, jr., was out of town all day yesterday, and am unable to announce anything except that we have over $40,000 to pay, $25,000 to you and Mr. S. Emery, and Sailer, I suppose, will get what is left if we stop. As soon as I can see Mr. S. Emery, jr., I will announce our decision.

E. E. BURROUGH.

10. Said Burrough and Emery, junior, now are insolvent, and they allege that they constitute the firm of the Emery Coal Company, and that it is insolvent too. The defendants Samuel Emery, senior, and Charles C. Sailer claim not to be members of said firm. The defendant Samuel Emery, senior, is a person of considerable pecuniary resources, and the defendant Sailer is believed to own a small amount of property in this District, but said Emery, junior, and said Burroughs are wholly irresponsible pecuniarily. The coal which, as hereinbefore stated, has since May 1, 1877, been delivered to the Emery Coal Company by the complainants, and which as aforesaid has within a few days passed into the possession and control of the defendant Samuel Emery, senior, he, said Emery, senior, now claims to hold as his own and to be a creditor of the Emery Coal Company as above stated besides, notwithstanding that the complainants were induced to furnish said coal upon his statements to the contrary.

11. On the 20th day of July, 1877, there appeared in the National Republican, a newspaper published in the city of Washington, an advertisement, of which the following is a copy:

WASHINGTON, D. C., *July* 18, 1877.

NOTICE OF ASSIGNMENT.—Notice is hereby given that Edward E. Burrough and Samuel Emery, jr., copartners trading as the Emery Coal Company, have this day made a general assignment to the under-
8 signed for the benefit of their creditors. Persons indebted to said firm will make payment to us without delay, and the creditors of said firm will present their claims, with particulars of same, to us at our office.

JOHN W. ROSS,
MILLS DEAN,
*Assignees of the Emery Coal Company, 458 Louisiana Avenue.*

The complainants are informed and believe that this advertisement was inserted by the authority of said Burrough and Emery, junior, and that

the assignment, so called, therein referred to has been executed by them. The assets of said firm, which by said assignment they attempt to convey, are trifling compared with their indebtedness to the complainants. Said assignment has been recorded in the land records of this District, and a certified copy thereof is hereto appended, marked "Exhibit E."

12. All the aforesaid doings of the defendants Emery, senior, Emery, junior, Sailer, and Burrough are parts of a scheme in which they have all been engaged to defraud the complainants. By their representations as to the financial standing of the Emery Coal Company, and particularly by their statements as to the connection therewith of said Emery, senior, they induced the complainants to furnish said firm large quantities of coal on credit. By setting up the claim of said Emery, senior, to be a creditor of said firm (instead of a member thereof, to whom it owed nothing at all till recently they alleged), and nominally transferring to him said coal-yard, and removing thither, as aforesaid, some two thousand tons of coal, they have fraudulently obtained from the complainants and placed where it cannot be reached save through the process of this court merchandise worth at least eight thousand dollars. By their publication in June last of an ante-dated notice of dissolution they have purposely and fraudulently made obscure their relations and responsibilities as partners, which matter is still further complicated by their more recent notice of assignment in
9 the name of said Emery, junior, and said Burrough, whereby the notice published in June said Emery, junior, appeared to have retired from the firm at that time, and they have prevented the complainants from pursuing a remedy at law since they do not know and cannot ascertain save through this court who were the members of said firm when the principal part of its indebtedness to the complainants accrued. By the pretended retirement of said Emery, senior, and said Sailer from said firm, and the claim now fraudulently set up that both of them are larger creditors, they have wrongfully sought to deprive the complainants of any remedy against these members of the firm who have any property; and finally, with intent to hinder and defraud the complainants, to whom alone said Emery Coal Company is really indebted in any considerable sum, they have, in the name of their two irresponsible members, executed a deed purporting to convey the assets of said firm to the defendants Dean and Ross, while the principal portion of their assets, the coal fraudulently obtained from complainants and transferred to the custody of said Emery, senior, is retained by him and treated as his own property.

PRAYERS.

The complainants therefore pray as follows:

1. That said assignment to the defendants Ross and Dean may be set aside.

2. That it shall be ascertained and determined by the court who were the members of the firm of the Emery Coal Company from the first of January, 1877, to the time of the filing of this bill.

3. That a receiver may be appointed to take charge of the assets of said firm, including the larger quantity of coal which as aforesaid the defendants have recently transferred to the custody of said Emery, to convert said assets into money under the direction of the court, and gener-

10 ally to wind up the affairs of said firm, and that the defendant may be enjoined from in any way disposing of said assets pending this suit, including the coal recently transferred as above mentioned.

4. That when it shall have been ascertained which of the defendants composed said firm of the Emery Coal Company from the first of January, 1876, to the 16th of May, 1877, and from the 16th of May, 1877, to the 14th of June, 1877, and from the last-mentioned date to the present time, that an account may be taken of the transactions between said firm, as composed during said several periods, and the complainants, and the amounts due from the several defendants members of said firm to the complainants ascertained.

5. That said receiver or said defendants, Emery, senior, Emery, junior, Sailer, and Burrough may be required to pay the indebtedness of said firm to the complainants.

6. That the writ of subpœna may issue requiring the defendants, and each of them, to appear, at an early day therein to be fixed, and answer fully the bill of complaint, and abide by and perform such order as may be made herein, and for such other and further relief as the nature of the case may require.

JNO. JOSEPH ALBRIGHT.
WILLIAM E. BARKER.
ANDREW LANGDON,
By ALBRIGHT.

STANTON & WORTHINGTON,
*Solicitors for Complainants.*

We, John Joseph Albright and William E. Barker, on oath, say that we have made the foregoing bill by us subscribed; that the statements made therein as of our own knowledge are true, and that those which are made upon information from others we believe to be true.

JNO. JOSEPH ALBRIGHT.
WILLIAM E. BARKER.

11 Subscribed and sworn to before me by both said Albright and said Barker, this 20th day of July, 1877.

[SEAL.] J. W. HAMILTON JOHNSON,
*Notary Public in and for the Dist. of Columbia.*

EXHIBIT A.

WASHINGTON, 12 *mo.*, 1, 1876.

LANGDON, ALBRIGHT & CO.:

ESTEEMED FRIENDS: In reply to your request for statement of condition of our business we annex below as nearly as possible at this time:

| | |
|---|---|
| Amount stock on hand at cost piled, coal | $75,000 |
| wood | 2,000 |
| Outstanding accounts and bills receivable | 36,000 |
| Fixture account | 15,000 |

LIABILITIES.

| | | |
|---|---|---|
| Indebtedness on open account and bills payable..... | $75,000 | |
| Balance in favor capital account..... ..... | 53,000 | |
| | $128,000 | $128,000 |

THE EMERY COAL CO.,
By E. E. BURROUGH.

EXHIBIT B.—*List of shipments.*

| | | | | |
|---|---|---|---|---|
| May | 2, | 1877, | 365 tons | broken. |
| " | 5, | " | 375 " | egg. |
| " | 5, | " | 330 " | chestnut. |
| " | 5, | " | 325 " | stove. |
| " | 9, | " | 530 " | stove. |
| " | 16, | " | 83 " | egg. |
| | | | 316 " | stove. |
| " | 16, | " | 540 " | stove. |
| " | 25, | " | 391 " | stove, L. V. |
| June | 15, | 1877, | 537 tons | egg. |
| " | 16, | " | 411 " | st'b't. |
| " | 18, | " | 326 " | egg. |
| " | 19, | " | 352 " | broken. |
| | | | 4,881 | |

12 EXHIBIT C.—*List of notes.*

| Received. | Dated. | Due. | Amount. |
|---|---|---|---|
| June 7, 1877. | June 2, '77. | August 5, '77..... | $2,529 16 |
| " 7, " | May 12, " | " 15, " ..... | 2,529 16 |
| " 8, " | " 25, " | " 28, " ..... | 2,746 26 |
| " 8, " | " 19, " | " 22, " ..... | 2,731 50 |
| " 22, " | June 5, '77. | Sept. 8, " ..... | 2,096 27 |
| " 22, " | " 15, '77. | Sept. 18, " ..... | 2,096 27 |

EXHIBIT D.

Notice is hereby given that the copartnership between E. E. Burrough, Samuel Emery, jr., and C. C. Sailer, under the firm-name of "The Emery Coal Company," was dissolved on the 16th day of May, 1877, Messrs. C. C. Sailer and Samuel Emery, jr., retiring from the firm.

All debts due to the firm, and all debts due by them, will be settled by E. E. Burrough, who will continue the business at the old stand and under the same title, viz., the Emery Coal Company.

C. C. SAILER.
E. E. BURROUGH.
SAM'L EMERY, JR.

In retiring from the firm we respectfully solicit a continuance of the patronage of the public for our successor.

C. C. SAILER.
SAM'L EMERY, JR.

## EXHIBIT E.

This indenture, made this 18th day of July, A. D. 1877, between Edward E. Burrough and Samuel Emery, jr., copartners trading under the name and style of the Emery Coal Company, and Lizzie J. Burrough, wife of the said Edward E., and Amanda Emery, wife of the said Samuel, jr. (who join for the purpose of conveying their dowers and not their separate estates), of the first part, and John W. Ross and Mills Dean of the second part, all of the city of Washington, D. C., witnesseth:

That whereas the said The Emery Coal Company are indebted to divers persons whose names and the amounts due them are set forth in Schedule A, hereto annexed, and being embarrassed and
13 unable to meet their current obligations, and the said Edward E. Burrough and Samuel Emery, jr., composing the said The Emery Coal Company, are willing to assign all of the property of the said The Emery Coal Company and of the individual members thereof for the benefit of the creditors of said The Emery Coal Company:

Now, therefore, this indenture witnesseth that for and in consideration of the premises, and for the purpose of making a just distribution of the estate of the said The Emery Coal Company and of the said Edward E. Burrough and Samuel Emery, jr., among their said creditors, and for the further consideration of one dollar to them in hand paid by the said John W. Ross and Mills Dean, the receipt whereof is hereby acknowledged, the said Edward E. Burrough and Samuel Emery, jr., hath granted, bargained, sold, assigned, transferred, and set over, and doth by these presents grant, bargain, sell, assign, transfer, and set over, unto the said John W. Ross and Mills Dean, or the survivor of them, their heirs and assigns, all that certain piece or parcel of ground lying and being in the city of Washington, District of Columbia, and known as sublot numbered seventeen (17) of Wm. Williams' subdivision of original lots five and six, and the west twenty-four feet ten inches of lot numbered four (4) in square numbered eight hundred and ninety-eight (898), as the same is recorded in liber W. B. M., folio 377, in the surveyor's office of the District of Columbia, subject to an encumbrance in favor of Henry Bradley; and also all the goods, chattels, and effects, rights and credits, of the said Edward E. Burrough and Samuel Emery, jr., and of the Emery Coal Company, consisting inter alia of the lease of the wharf at foot of Sixth street west, of the city of Washington, the fixtures of the said wharf, consisting of scales, cars, engine, hoisting apparatus, trestle, railway, &c., horses, mules, carts, wagons, and harness, and the stock of coal, the book accounts, and choses in action, except, however, so much as is exempted by law from execution; to have and to hold, receive, and take the same to the said John W. Ross and Mills Dean, or the survivor of them, their heirs and assigns, forever, in trust, however, and to the intent and purpose that they, the said John W. Ross and Mills Dean, or the survivor of them, shall and do, as soon as convenient, sell and dispose of all the lands and
14 tenements, goods and chattels, of the said Edward E. Burrough and Samuel Emery, jr., and the Emery Coal Company (except such as are exempted by law, which are excepted in this deed), and collect and recover all the outstanding claims and debts due the said Edward E. Burrough and Samuel Emery, jr., and the Emery Coal Company, and

with the money arising therefrom, after deducting their, the said John W. Ross and Mills Dean's, reasonable costs and charges, shall and do pay the said aforementioned creditors of the said Edward E. Burrough, Samuel Emery, jr., and the Emery Coal Company their respective demands in full, if there shall be sufficient assets to satisfy the whole, and if there shall not be sufficient assets to satisfy all the just demands of the creditors in full, then pro rata according to the amount of their respective demands, without preference as between individuals; and should any part or portion of said trust property or funds remain after fully complying with the trusts aforesaid, then the said John W. Ross and Mills Dean shall deliver and reconvey the same to the said Edward E. Burrough and Samuel Emery jr., their heirs, executors, administrators, and assigns.

In testimony whereof the said Edward E. Burrough and Samuel Emery, jr., composing the firm of the Emery Coal Company, and Lizzie J. Burrough, wife of the said Edward E., and Amanda Emery, wife of the said Samuel, jr., have hereunto set their hands and seals, the said day and year first herein written, the words "and Mills Dean" having been interlined in the ninth line on the fourth page before signing.

E. E. BURROUGH. [SEAL.]
SAM'L EMERY, JR. [SEAL.]
LIZZIE J. BURROUGH. [SEAL.]
AMANDA EMERY. [SEAL.]

Witness:
ROBT. V. HUGHES.

The above deed was recorded July 20, 1879.

DISTRICT OF COLUMBIA, *ss:*

I, Robert V. Hughes, a justice of the peace in and for the District of Columbia, do hereby certify that Edward E. Burrough and Lizzie
15 J., his wife, and Samuel Emery, jr., and Amanda, his wife, parties to a certain deed bearing date the 18th day of July, 1877, and hereto annexed, personally appeared before me, in the District aforesaid, the said Edward E. Burrough and Lizzie J., his wife, and Samuel Emery, jr., and Amanda, his wife, being personally known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Lizzie J. Burrough and Amanda Emery being by me examined privily and apart from their husbands, and having the deed aforesaid fully explained to them, acknowledged the same to be their act and deed, and declared that they had willingly signed, sealed, and delivered the same, and that they wished not to retract it.

Given under my hand and seal this 18th day of July, A. D. 1877.

ROBERT V. HUGHES, *J. P.*, [SEAL.]
*Justice of the Peace.*

EXHIBIT A.

LEDGER CREDITS.

| | | |
|---|---|---|
| 605. | Thos. Pobee | $11 20 |
| 623. | John A. Baker | 80 39 |
| 650. | Thos. W. Smith | 2 56 |

| | |
|---|---|
| 656. Wm. Ryan | 18 62 |
| 666. Gibson Bros | 8 00 |
| 104. A. J. Williams | 8 30 |
| 108. Stephenson & Bro | 22 00 |
| 109. G. L. Sheriff | 76 91 |
| 110. W. M. Galt & Co | 125 70 |
| 112. T. Edw. Clark & Co | 19 |
| 113. New Eng. Car Co | 23 55 |
| 114. A. Archer & Bro | 71 19 |
| 117. Wash. & G't'n R. R. Co | 2 00 |
| 130. P. Mann | 49 68 |
| 131. Geo. A. Sheehan | 52 51 |
| Rent to July 15, wharf | 437 50 |
| Rent of wharf-house | 0 00 |
| John W. Grason, ag't | 30 00 |
| Maryland Coal Co | 78 47 |
| | $1,098 77 |



| | |
|---|---|
| Sam'l Emery | $8,940 42 |
| C. C. Sailer | 8,500 00 |
| Langdon, Albright & Co | 18,228 62 |
| | $35,669 04 |

| | |
|---|---|
| Samuel Emery | $1,500 |
| Samuel Emery, secured by collateral | 4,750 |

*Subpœna to defendants.*

In the supreme court of the District of Columbia, the 20th day of July, 1877.

JOHN J. ALBRIGHT ET AL., FIRM OF LANGDON, Albright and Company, complainant, *against* SAMUEL EMERY, SR., ET AL., DEFENDANTS. — No. 5697. Eq. doc. 17. Subpœna to answer.



The President of the United States to Samuel Emery, sr., Samuel Emery, jr., Charles C. Sailer, Edward E. Burrough, John W. Ross, and Mills Dean:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief-justice.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
*Ass't Clerk.*

18 *Restraining order.—Issued July* 20, 1877.

The defendants are hereby restrained, as prayed in the within mentioned bill, until further order, to be made, if at all, after a hearing, which is fixed for the 24th day of July, A. D. 1877, of which take notice.

By the court:

A. WYLIE, *Justice.*

*Return of marshal.*

Not to be found, def't Edward E. Buroughs. Summoned and served notice of inj'n on all the others July 20th, 1877.

*Affidavit of Samuel Emery, sr.*

In the supreme court of the District of Columbia.

J. J. ALBRIGHT ET AL. *vs.* SAMUEL EMERY, SR., ET AL. } 5697. Equity.

The affidavit of the defendant Samuel Emery, sr.

19 This defendant respectfully shows unto your honorable court that he is a citizen and resident of the District of Columbia, where he has resided for the past eleven years; that he is not indebted to the complainants, and is not, nor has he ever been a member of the firm the Emery Coal Company; that he has had no dealings with *with* the complainants since April, 1876.

That prior to April, 1876, he was engaged in the coal and wood business, under his own name and having no partners, and sold out said business on the first day of April, 1876, to C. C. Sailer, E. E. Burrough, and Samuel Emery, jr., who at that date formed a partnership, under the name and style of the Emery Coal Company. That the fact of such sale and the formation of said partnership was published in the newspaper called the National Republican, and the complainants had full knowledge of said sale and partnership as they sold merchandise to the
20 said The Emery Coal Company continuously from and after said April, 1876, with full knowledge as to who composed said firm.

This defendant further shows that he is extensively engaged in the coal business in this city and is entirely solvent and able to pay all his obligations as they fall due, and enjoys a good credit at the banks and financial institutions of the city; that by the order granted on filing of complainants' bill this defendant is restrained from carrying on his business, to the great loss and detriment to his said business and greatly to his injury.

That the allegations in complainants' bill, that this defendant has conspired with the other defendants or with any one else to cheat and defraud the complainants is maliciously false, as said complainants knew at time they made affidavit to their said bill, and that the allegations that large quantities of coal recently furnished by complainants to the Emery Coal Company had been transferred to the custody of this defendant
21 is wholly false and untrue, as complainants well knew.

That this defendant, reserving the right to further answer the allegations in complainants' bill, prays that the restraining order made herein may be discharged.

This defendant says that he never at any time represented himself to be a member of the firm of the Emery Coal Company; and further, that the complainants well knowing that this defendant was not a member of said firm have requested him to endorse the notes of said firm.

SAM'L EMERY.

ROSS and DEAN, *Sol'rs.*

I do solemnly swear that I have heard read the foregoing answer and know the contents thereof, and that the facts therein stated of my own knowledge are true, and the facts stated on information and belief I believe to be true.

SAM'L EMERY.

Subscribed and sworn to before me this 21st day of July, 1877.

JOHN W. ROSS,
*Notary Public.*

22 In the supreme court of the District of Columbia.

J. J. ALBRIGHT ET AL.
*vs.*
SAM'L EMERY, SR., ET AL. } 5697. Equity.

On hearing the affidavit of the defendant Samuel Emery, sr., it is this 21st day of July, 1877, ordered that the restraining order made herein on the 20th day of July, 1877, so far as it relates to said Samuel Emery, sr., be, and the same is hereby, discharged.

By the court:

A. WYLIE.

*Separate answer of Samuel Emery, sr.—Filed July* 24, 1877.

In the supreme court of the District of Columbia.

JOHN JOSEPH ALBRIGHT ET AL.
*vs.*
SAMUEL EMERY, SR., ET AL. } In equity. No. 5697.

The separate answer of Samuel Emery, senior, to the bill of complaint of the above-named plaintiffs.

23 In answer to said bill, or to so much thereof as I am advised it is material for me to answer, I say as follows:

1. I admit the allegation in the first paragraph of said bill with reference to the residence of the parties to this suit.

2. I admit that complainants have been for the time alleged in the said bill engaged as wholesale dealers in coal in said District. I deny the allegation in the second paragraph of said bill, that prior to March, 1876,

the defendant Samuel Emery, sr., Samuel Emery, jr., and Edward E. Burrough were engaged in business in said District as retail dealers in coal. Prior to the date named I was solely interested in said business and carried it on in my individual name, and transacted business with the plaintiffs under the name of Samuel Emery to an amount of $70,000 or $80,000. The other defendants named in said paragraph were only clerks, and the fact that they had no other connection with my business was well known to the plaintiffs. I admit that complainants sold coal to me when I owned said business, and state that all of said coal was fully paid for.

3. I admit that in April, 1876, defendant Sailer became interested in the retail coal business, but not in any firm or concern in which I then had an interest. On the first day of April, 1876, I sold to C. C. Sailer, Edward E. Burrough, and Samuel Emery, jr., all my right, title, and interest in the wood and coal business, and gave public notice of said sale by an advertisement in the National Republican, a daily newspaper published in Washington City, in said District, a copy of which is hereto attached, marked "Exhibit S. E., sr., No. 1," and is prayed to be taken as part hereof. Said advertisement also contained a notice that the said purchasers would continue said business under the name of the Emery Coal Company. I cannot state whether said Emery Coal Company wished to purchase coal from the complainants on credit. I deny that I
24 ever informed the complainants that the original firm ever consisted of myself, said Emery, jr., and Burrough, and that said firm so composed had made profits as alleged in said bill. I stated to the complainants that the business of which I was sole owner had made a profit of $10,000 according to the statement of my employees, who took an account of profits and of stock on hand. This amount so realized in profits by me I turned over to said Burrough and Samuel Emery, jr., in payment for the services of said Burrough and Samuel Emery, jr. The Emery Coal Company passed to me its notes for the purchase-money of said business. I deny that complainants were ever informed by me that I had advanced in money or its equivalent the sum of $10,000 more, which was to form part of the capital stock. Of the notes given me by the Emery Coal Company for said purchase-money there was one note payable on demand for the sum of $10,000, on which I agreed with said company not to insist on immediate payment. But said sum of $10,000 was not advanced by me as part of the capital stock of said company. Said note was taken as a valid obligation of said company in good faith as part of said purchase-money.

I deny that complainants began to deliver coal to the Emery Coal Company relying upon any assertion of mine that I owned a large part of the capital of said Emery Coal Company. I never made any assertion to the complainants, or to any of them, that I ever owned any of the capital of the Emery Coal Company. On the contrary, I informed A. Langdon, one of the complainants, within a few months after said sale, that I had transferred all my interest in the coal business to the Emery Coal Company, and that I had nothing whatever to do with said company. I know nothing of my own knowledge of the other matter alleged in said paragraph, except that I have seen papers of said firm signed by each of the three members of said firm.

25 4. I know nothing of the matters alleged in the fourth para-

graph of said bill, except that wherein it is alleged that complainant Albright saw me and inquired as to the financial matters of said firm. I have no recollection whatever of any such conversation. I utterly deny that complainants continued to fill large orders for coal which they received from said firm, relying upon any representations made by me with reference to said firm, or relying upon my connection with said firm. Said complainants well knew long prior to said December, 1876, that I had no connection with said firm.

5, 6. I know nothing of my own knowledge of the matters alleged in the fifth and sixth paragraphs of said bill.

7. I had nothing whatever to do with the publication referred to in the seventh paragraph of the bill. I read the notice referred to in the daily newspaper, but know nothing of my own knowledge of any other matters alleged in said paragraph.

8. I admit that the parties are related, as alleged in the eighth paragraph of the bill. None of the defendants ever carried on the wood and coal business under the name of Samuel Emery except myself. I never was a member of the Emery Coal Company. The defendants Edward E. Burrough, C. C. Sailer, and Samuel Emery, jr., were well known to the complainants to be the only members of said Emery Coal Company, and with such knowledge on the part of complainants obtained goods on credit from said complainants, as I am informed and believe. When said company was formed it owed no one else than me, to my knowledge, and I may have informed the complainants of that fact. I admit that I am the owner of the coal-yard at the corner of First and B streets, NW. I admit that said yard was occupied by the Emery Coal Company from April 1, 1876, until May 16, 1877, at a rental of $300 per annum, payable to me by said company. I know that the wharf is leased from Van
26 Riswick, as alleged in said bill. I resumed possession of the B street yard on the 16th day of May, and paid the Emery Coal Company for all its stock and fixtures on said yard, since which time I have been carrying on the wood and coal business at said stand in my own name. Since I have been so engaged in business I have bought coal from the Emery Coal Company as wholesale dealers. I deny the allegation in said paragraph that of the large quantity of coal delivered by the complainant to the Emery Coal Company two thousand tons, worth $8,000, has within a few days been hauled from said wharf to said coal-yard and is now in my keeping.

9. I deny that I, as one of the defendants, ever gave the complainants to understand that complainants were the only creditors to whom the firm of the Emery Coal Company was indebted. I believe that complainants knew at all times since the sale by me to the Emery Coal Company that said firm was indebted to me in more than the sum of $10,000. I know nothing as to the alleged statements made to the complainants by the defendant Burrough. I admit that I informed the complainants at the date alleged that I was a creditor of said company, but I deny that that was the first intimation had from any source that I claimed to be a creditor of said company. I know nothing of the other matters alleged in said paragraph.

10. I believe that said Burrough and Emery, jr., are now insolvent. I admit that I claim not to be a member of the Emery Coal Company. I

admit that I am solvent. I claim to hold as my own the coal purchased by me from the Emery Coal Company. I deny that any great portion of said coal so purchased by me was coal recently delivered to said company by the complainants. I deny that the complainants were induced to deliver coal to said company upon any statements of mine that I was not a creditor of said company.

11. I know nothing of my own knowledge as to the matters al-
27 leged in the eleventh paragraph of said bill, except that I have read the advertisement therein referred to.

12. I utterly deny that any doings referred to in said bill in which I was in any way concerned are a part of a scheme in which I, as one of said defendants, have been engaged to defraud the complainants. The charge of knowledge of fraud implied to me in the 12th paragraph of said bill is false, and complainants knew the same to be false. Complainants have never received from me any representations whatever which could have induced them to sell coal to the Emery Coal Company on credit. Complainants have never had any statement from me that could in any way induce them to believe that I was connected with said company. On the contrary, I took the most public means of advertising the fact that I had sold all my interest in said business to the said Emery Coal Company. Within two or three months after said sale and advertisement, Langdon, one of the complainants, met me and asked me to induce the Emery Coal Company to transact their business with the Citizens' National Bank in which said Langdon was director, as I am informed. I then informed said Langdon that I had nothing whatever to do with said Emery Coal Company, and that I could only mention his request to the members of the Emery Coal Company, which I did. I have always claimed to be a creditor of said Emery Coal Company. I have never claimed to be a member of the said company. The coal-yard referred to in the 12th paragraph was not nominally transferred to me, but was bought by me from said company in a legitimate business way. I never knew that the Emery Coal Company was unable to meet its obligations until the 15th day of July, 1877. Up to said date I believed it to be solvent and dealt with it on a legitimate business basis. Since the 16th of May I have been a retail dealer in wood and coal, and was compelled to deal with some wholesale dealer. From and after the 16th of May I purchased coal
28 from said company and delivered to said company some coal from my yard in exchange. Said coal was not purchased by me with any knowledge or belief that the Emery Coal Company could not meet its obligations. The total dealings in said coal and wood between me and the Emery Coal Company since I resumed business will not exceed $2,305.64. And this defendant shows to the court that the complainants have not in and by their said bill stated such a case as doth or ought to entitle them to said relief as is thereby sought and prayed against this defendant, and this defendant prays that he may have the same advantage from this defence as if said bill were specially demurred to.

And having fully answered the bill of the complainants, I pray that I may be hence dismissed with my reasonable costs.

SAMUEL EMERY.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have heard read the answer by me subscribed and know the contents thereof; that the facts therein stated as of my own knowledge are true, and that the facts stated as upon the information of others I believe to be true.

SAMUEL EMERY.

Subscribed and sworn to before me this 24th day of July, 1877.

R. J. MEIGS, *Clerk*,
By M. A. CLANCEY, *Ass't Clerk.*

EXHIBIT S. E., SR., No. 1, TO ANSWER.

WASHINGTON, D. C., *April* 1, 1876.

I have this day disposed of all my interest in the wood and coal business at First and B streets northwest, and at the wharf near the
29 foot of Sixth street southwest, to C. C. Sailer, Edward E. Burrough, and Samuel Emery, jr., who will hereafter conduct the business under the name of "The Emery Coal Company." Thankful for past patronage, I respectfully ask a continuance of the same for my successors in the business. All persons having claims in connection with the above business will present them for payment, and all indebted will please make payment to "The Emery Coal Company."

SAMUEL EMERY.

WASHINGTON, D. C., *April* 1, 1876.

We, the undersigned, have this day associated ourselves together under the name and style of "The Emery Coal Company" for the purpose of continuing the wood and coal business heretofore carried on by Samuel Emery. We respectfully solicit a continuance of the patronage of our friends and the public generally.

C. C. SAILER.
EDWARD E. BURROUGH.
SAMUEL EMERY, JR.

*Affidavit of William E. Hodge.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL.
*vs.*
EMERY, SR., ET AL. } 5697. Equity.

William E. Hodge, being sworn, upon his oath says that he is acquainted with Samuel Emery, sr., and Mr. Albright and Mr. Barker, of the firm of Langdon, Albright & Co.; that on or about the 20th day of June, 1877, he was present at a conversation between said Emery, Albright, and Barker, and heard the said Albright ask the said Sam-
30 uel Emery, sr., if he would endorse and become responsible for the Emery Coal Company, and said Emery replied, "No," and that there was considerable other conversation between the parties, from the

tenor of which the said Albright and Barker were aware that said Emery was not connected with the Emery Coal Company.

WM. E. HODGE.

Sworn to before me this 24th day of July, 1877.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

*Answer of Edward E. Burrough.—Filed July* 24, 1877.

In the supreme court of the District of Columbia.

ALBRIGHT ET AL. *vs.* EMERY, SR., ET AL. } No. 5697. Equity.

The separate answer of the defendant Edward E. Burrough to the complainants' original bill.

1. I admit that I am a resident of the District of Columbia.

2. In answer to the second paragraph in the complainants' bill I say that prior to April 1, 1876, Samuel Emery, sr., was engaged in the wood and coal business in his own name, having no partner or partners,
31 and this defendant and Samuel Emery, jr., were employed by said Samuel Emery, sr., as clerks and salesmen, and I aver that the complainants were fully aware that said Samuel Emery, sr., had no partners.

3. In answer to third paragraph I say that on April 1st, 1876, this defendant, C. C. Sailer, and Samuel Emery, jr., formed a copartnership under the name and style of the Emery Coal Company. A notice of the formation of said firm, with the names of the copartners appended thereto, was published in the National Republican on the 26th day of April, 1876, and on other dates, and I aver that prior to the formation of said firm the complainants were informed that it was about to be formed, and the names of the partners, to wit, this defendant, C. C. Sailer, and Samuel Emery, jr., were communicated to them. That said firm purchased the business theretofore carried on by Samuel Emery, sr., which fact was also duly published in the National Republican, and personally communicated to the complainants by this defendant. I deny that I ever represented to the complainants that Samuel Emery, sr., contributed any capital to the said The Emery Coal Company, but I informed the complainants that said Samuel Emery, sr., was a creditor of said firm to the amount of $10,000 on account of purchase-money. I deny that the complainants were ever induced to credit the Emery Coal Company by representations that Samuel Emery, sr., was a member of said firm, or in any manner interested in said firm. On the contrary, the complainants have several times requested this defendant to procure the endorsement of said Samuel Emery, sr., on the notes of the Emery Coal Company. I admit that I was the active member of the Emery Coal Company, and by agreement of the partners of said firm each partner when signing the name of the firm appended his individual signature, hence all the notes and checks of said firm bear the individual signature of one member of the said firm.

32 4. In answer to paragraph four I say that the statement therein alluded to was asked for and furnished after the large quantities of

coal mentioned in said paragraph had been delivered. Said statement was made by estimating the quantity of coal on hand, and was as near correct as could be ascertained, and the complainants were informed at the time said statement was furnished that the surplus therein represented included the amount due to Samuel Emery, sr., on account of purchase-money. The said statement was prepared by this defendant, and was to the best of his knowledge at that time correct. The complainants were fully aware at that time, to wit, Dec. 1, 1876, that Samuel Emery, sr., was a creditor of the Emery Coal Company for purchase-money.

5. In answer to paragraph five I say that the coal was ordered and delivered as therein charged, and at the time said coal was ordered and delivered the complainants were informed of the approaching dissolution of the Emery Coal Company, which dissolution was consummated on 15th day of May, 1877.

6. In answer to paragraph six I say that said notes were delivered to complainants as charged, with full knowledge on their part as to who were liable on said notes.

7. In answer to paragraph seven I say that said advertisement appeared as charged in said paragraph, and this defendant agreed to purchase the interest of the said C. C. Sailer in the Emery Coal Company for $8,500, and the interest of the said Samuel Emery, jr., for $4,000, but not having settled with said Samuel Emery, jr., he retained his interest in said firm. I deny that I informed complainant Barker that complainants could hold all the members of the late firm on all the notes held by complainants, but I did inform said Barker that I believed the defendant Sailer was liable on the note for $3,500 due July 16, 1877, but that his liability or not was a legal question that I was not able to decide.

33 8. In answer to paragraph eight I admit that the relationship of the parties is as is therein charged. And further answering said paragraph I say that the complainants knew that when Samuel Emery, sr., was carrying on business in his own name that he had no partners; that when the Emery Coal Company commenced business the capital of said firm was between $26,000 and $27,000, and it was expected that C. C. Sailer would put an additional $6,000 of capital into the firm in August, 1876, but he was unable to do so, and the credit of the said firm was good. The real estate at corner of B and 1st streets, NW., occupied by the Emery Coal Company is owned by Samuel Emery, sr., and was leased by said company from him on 15th of May, 1877. Said coal-yard was surrendered to said Emery, sr., and he paid the Emery Coal Company for the stock and fixtures therein. That the allegation that two thousand tons of coal have been transferred from the wharf of the Emery Coal Company to the yard of the defendant Samuel Emery, sr., is false; that the only coal so transferred was bought by said Emery, sr., in the regular course of business, and amounts to $2,305.64. All of said coal has been paid for except $207.90.

9. In answer to paragraph nine I say that I did not, down to the 14th day of July, represent to the complainants that they were the only creditors of the Emery Coal Company, but aver that the complainants knew from the formation of the Emery Coal Company that Samuel Emery, sr., was a creditor of the Emery Coal Company for purchase-money to the amount of $10,000. The allegation that the complainants did not know until the

17th of July, 1877, that Samuel Emery, sr., was a creditor of the Emery Coal Company is absolutely false and untrue, as the fact of his being a creditor has been frequently discussed between this defendant and the complainants.

10. In answer to paragraph ten I say that this defendant and
34 Samuel Emery, jr., composing the firm of the Emery Coal Company, are insolvent, and aver that said insolvency was caused by the large decline in coal and failure on part of the customers of said firm to pay for coal purchased. That the connection of the defendant C. C. Sailer with the Emery Coal Company has at all times been known to the complainants, the time he went into said firm and the date that he retired being communicated to the complainants by this defendant.

11. In answer to paragraph eleven I say that on the 18th day of July, 1877, this defendant and Samuel Emery, jr., composing the firm of the Emery Coal Company, made a general assignment of all their property for the benefit of their creditors, without preference, to the defendants John W. Ross and Mills Dean. That the day said assignment was made, and before it was executed, this defendant, in company with the defendant Dean, called at the office of the complainants and exhibited to them a copy of said assignment, and said assignment was filed for record in the office of the recorder of deeds on the 20th of July, 1877. That said assignment was made as soon as it was discovered that the Emery Coal Company could not meet its obligations, and for the purpose of having a fair and equitable distribution of the assets of said firm among its creditors.

12. In answer to paragraph twelve I say that the allegations therein that this defendant has been engaged in a scheme to cheat and defraud the complainants, or that he has made any false representations to them, or that they were not aware who composed the Emery Coal Company and who were its creditors are absolutely false and untrue, as complainants well know, and all the other allegations in said paragraph reflecting on the good faith and honesty of this defendant are wholly false and untrue.

13. Further answering complainants' bill I say that I put all my capi-
tal into the Emery Coal Company and devoted my entire time to
35 the business of said firm and tried to the best of my ability to make said business a success. That the failure of said company was caused by the large decline in the price of coal, it frequently happening that on the arrival of coal at the wharf it was worth less than was paid for it, and owing to the general depression of business many of the customers of the Emery Coal Company have failed to pay for the coal sold to them, and the sum of $22,000 was invested in fixtures at the wharf of said company, which are now unavailable to a great extent.

EDWARD E. BURROUGH.

Edward E. Burrough, being affirmed according to law, having conscientious scruples against taking an oath, says that he has read the foregoing answer and knows the contents thereof, and that the facts therein stated of his own knowledge are true, and the facts therein stated on information and belief he believes to be true.

EDWARD E. BURROUGH.

Subscribed and sworn before me July 23, 1877.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk.*

*Answer of Samuel Emery, jr.—Filed July 24, 1877.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL.
*vs.*
EMERY, SR., ET AL. } No. 5697. Equity.

The separate answer of the defendant Samuel Emery, jr., to complainants' original bill.

36 1. I admit that I am a resident of the District of Columbia.

2. In answer to the second paragraph of complainants' bill I say that I was not in March, 1876, nor prior to that time, nor since that time, engaged in the coal business with the defendant Samuel Emery, sr.; that I am not nor have I ever been a partner of the said Samuel Emery, sr., in the coal business or any other business; that prior to April, 1876, the said defendant, Samuel Emery, sr., was engaged in the coal business in his own name, and without any partner or partners whatever, and this defendant and the defendant E. E. Burrough were employed by him as clerks and salesmen, and on the first day of April, 1876, the defendants C. C. Sailer, E. E. Burrough, and this defendant formed a copartnership under the name and style of the Emery Coal Company, and said firm purchased from the defendant Samuel Emery, sr., his coal and wood business; that the fact of the formation of said firm and the purchase of the interest of said Samuel Emery, sr., was duly published in the newspaper called the National Republican on the 26th day of April, 1876, and on other dates; that there has never been any concealment or attempt at concealment as to who composed the firm The Emery Coal Company, and this defendant believes and avers that the complainants have at all times been cognizant as to who were the members of said firm.

3. In answer to the third paragraph of complainants' bill I say that I never at any time represented to the complainants that Samuel Emery, sr., was a member of the firm The Emery Coal Company, or that he had contributed to the capital of said firm, or that he was in any way interested in said firm; that there never was shown on part of the complainants any hesitancy about crediting the Emery Coal Company; but, on the contrary, the complainants frequently urged the Emery Coal Company to
37 purchase of them, insisting on the said company taking coal that had been shipped to this city for other parties.

4. In answer to fourth paragraph I say that the statement furnished complainants was prepared by the defendant E. E. Burrough, who was the financial partner of the Emery Coal Company, and said statement was believed by said Burrough and by this defendant to be correct.

5. In answer to fifth paragraph I say that I was absent from the city part of the time mentioned therein, but believe the coal was shipped and delivered as charged.

6. In answer to sixth paragraph I neither admit nor deny the allegations therein.

7. In answer to the seventh paragraph I say that on or about the 16th day of May, 1877, I agreed to sell my interest in said firm, The Emery

Coal Company, to the defendant E. E. Burrough for the sum of $4,000, and a notice of dissolution was published in the newspapers; but subsequently said Burrough was not able to pay the said sum of $4,000, and this defendant retained his interest in said firm, and joined said Burrough in the assignment to the defendants Ross and Dean. I know nothing of the conversation alleged to have taken place between Burrough and Barker.

8. In answer to paragraph eight I say I am the son of Samuel Emery, sr., and the son-in-law of the defendant Sailer; that the Emery Coal Company sold their yard at 1st and B streets to the defendant, Samuel Emery, sr., in March or April, 1877, and delivered possession of same to him on 16th of May, 1877, and the said The Emery Coal Company received payment for the stock and fixtures of same at their full value. The real estate where said yard was located belonged to Samuel Emery, sr., and was leased by him to the Emery Coal Company at $300 per annum; that the allegations that large quantities of coal have been transferred from the coal wharf of the Emery Coal Company to the yard of the defendant Samuel Emery, sr., is false; that no coal has been so transferred except
38 such as said Emery, sr., has purchased in the regular course of business, and that amounted to $2,305.64, and all of said coal has been paid for except $207.90, and the allegation that two thousand tons of coal have been transferred from the wharf of the Emery Coal Company to the yard of the defendant Samuel Emery, sr., is false and untrue.

9. In answer to paragraph nine I say that I never have represented to the complainants that they were the only creditors of the Emery Coal Company. That the defendant Samuel Emery, sr., has not had control of the coal shipped to the Emery Coal Company by complainants at any time since the formation of the said partnership, nor has he ever exercised any authority or control in or about the business of the said The Emery Coal Company.

10. In answer to the tenth paragraph I say that the Emery Coal Company, composed of this defendant and E. E. Burrough, is insolvent.

11. In answer to paragraph eleven I say that on the 18th day of July, 1877, the Emery Coal Company made a general assignment for the benefit of their creditors to the defendants John W. Ross and Mills Dean.

12. In answer to paragraph twelve I say that all the allegations in said paragraph are maliciously false and untrue, as the complainants each knew, and I deny that any of the members of the Emery Coal Company have practiced any fraud or deception on complainants, or in any manner conspired to cheat or defraud them, or that said company has fraudulently transferred any of their assets to the defendant Samuel Emery, sr.

13. Further answering complainants' bill I deny all and each of their allegations of fraud and deception, and say that I put all my capital into the Emery Coal Company and endeavored to make the business of said firm a success, the failure of said firm being due to the decline in coal and losses by reason of bad debts

SAMUEL EMERY, JR.

39 Samuel Emery, jr., being sworn, says that he has heard read the foregoing answer and knows the contents thereof, and that the facts

therein stated of his own knowledge are true, and the facts stated on information and belief he believes to be true.

SAMUEL EMERY, JR.

Subscribed and sworn before me July 23, 1877.

R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Ass't Clerk.*

*Answer of C. C. Sailer.—Filed July* 24, 1877.

In the supreme court of the District of Columbia.

ALBRIGHT ET AL. *vs.* EMERY, SR., ET AL. } No. 5697. Equity.

The separate answer of the defendant Charles C. Sailer to the complainants' original bill.

1. I admit that I am a resident of the District of Columbia.

2. In answer to the second paragraph I say I know nothing of the matters therein stated.

3. In answer to the third paragraph I say that on the first day of April, 1876, this defendant, E. E. Burrough, and Samuel Emery, jr., formed a copartnership under the name and style of the Emery Coal Company, and said firm purchased the business that had prior to that time been carried on by Samuel Emery, sr., and the fact of such partnership and purchase was published in the newspaper called the National Republican, and this defendant believes and avers that the complainants had full knowledge as to who composed said firm. That this defendant never represented to the complainants that Samuel Emery, sr., owned a large part of the capital of the Emery Coal Company.

4. That this defendant sold out his interest in the Emery Coal Company on the 16th of May, 1877, to E. E. Burrough, receiving therefor the notes of said Burrough for $8,500, which notes this defendant still holds.

5. And further answering this defendant denies that he has conspired with the other defendants to cheat and defraud the complainants, or that he has been party to any misrepresentations made to complainants, but avers that his entire connection with the Emery Coal Company has been open and aboveboard, and that complainants were fully aware of every thing done by said firm in relation to dissolution of said firm. That this defendant has never attempted to hold himself discharged of any of the obligations of the Emery Coal Company contracted while he was a member of said firm.

6. Further answering this defendant says that, without following the vague and incongruous allegations of complainants' bill, he denies in toto that he or the Emery Coal Company have been engaged in any conspiracy to cheat and defraud the complainants or induce them to give credit to the Emery Coal Company by misrepresenting the condition of said company or who composed said firm, but avers that so long as he was a member of said firm he believes the complainants urged and insisted on the said company buying coal from them on credit.

7. And further answering this defendant says that if the complainants have any just demand against him they have a complete and adequate remedy at law.

And having fully answered, this defendant prays that he may be hence dismissed with his reasonable costs.

C. C. SAILER.

41 Charles C. Sailer, being sworn, says that he has heard read the foregoing answer and knows the contents thereof, and that the facts therein stated of his own knowledge are true, and those stated on information and belief he believes to be true.

C. C. SAILER.

Subscribed and sworn before me July 23, 1877.

R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Ass't Clerk.*

*Answer of Assignees, John W. Ross and Mills Dean.—Filed July* 24, 1877.

In the supreme court of the District of Columbia.

JOHN JOSEPH ALBRIGHT ET AL. *vs.* SAMUEL EMERY, SR., ET AL. } No. 5697. In equity.

The joint answer of John W. Ross and Mills Dean, assignees, defendants, to the bill of complaint of the above named plaintiffs.

1. We admit the allegations contained in the first paragraph of the bill as to the residence of the parties to said suit.

2. We know nothing of our own knowledge as to the matters alleged in the paragraphs of said bill numbered two (2) to ten (10) inclusive, except the allegation with reference to the relationship existing between defendants Samuel Emery, sr., Samuel Emery, jr., E. E. Burrough, and C. C. Sailer, which we believe to be as alleged.

11. It is true, as alleged in the eleventh paragraph of said bill,
42 that notice of assignment by the Emery Coal Company to us as assignees was published as alleged. On the 16th of July we were consulted by E. E. Burrough and Samuel Emery, jr., as members composing the Emery Coal Company, with the purpose of having a deed of assignment prepared conveying all their estate to assignees for the benefit of their creditors. Said deed was prepared on the 17th day of July and executed on the 18th. On the said 18th day of July, before said deed was executed, as the defendant Ross is informed and believes, the defendant Mills Dean, in company with the defendant Burrough, went with said deed of assignment to the plaintiffs Albright and Barker and read over to said Albright and Barker said deed of assignment. No objection was made by either member of said firm to said deed of assignment. Said deed was duly filed for record in the office of the recorder of deeds in the morning of the 20th of July. Upon taking possession of the property covered by said assignment these defendants found that there were twelve mules and one horse, which could be kept only at considerable expense. On the 20th

of July we advertised the said live-stock and the carts, harness, and other appurtenances of the stable at public sale on the 26th instant, and began preparations to collect the outstanding accounts of said firm so assigned to us.

12. In answer to the 12th paragraph of said bill, we deny that, to the best of our information and belief, said assignment was any part of a scheme in which the defendants have been engaged to defraud the complainants. The purpose of said assignment, as expressed to us, was to dispose of all the assets of the Emery Coal Company for the purpose of paying the debts of the copartners comprising said company, and it was and is the intention of these defendants to faithfully execute the trust imposed upon them by said deed. We have no personal knowledge of the other matters alleged in said paragraph.

43 And having fully answered, we pray that we may be hence dismissed with our reasonable costs.

JOHN W. ROSS.
MILLS DEAN.

We do solemnly swear that we have read the answer by us subscribed and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and that the facts therein stated upon information and belief we believe to be true.

JOHN W. ROSS.
MILLS DEAN.

Subscribed and sworn to before me this 24th day of July, A. D. 1877.
R. J. MEIGS, *Clerk.*

44 *Motion for appointment of receiver.*

In the supreme court of the District of Columbia.

JOHN J. ALBRIGHT ET AL.
*vs.*
SAMUEL EMERY ET AL. } No. . Eq. doc. 17.

The complainants move the court to appoint a receiver in this case to take possession of all the assets of the Emery Coal Company (including the coal which in the bill in this case it is charged has recently been delivered by complainants to said company and transferred to the custody of defendant Samuel Emery, senior, from the wharf of the Emery Coal Company) and to convert the same into money pending the suit, and hold the proceeds subject to the further order of the court.

STANTON AND WORTHINGTON,
*Sol'c'rs for Compl't.*

To the defendants, Samuel Emery, senior, Samuel Emery, junior, Charles C. Sailer, Edward E. Burrough, and Ross and Dean:

45 Take notice that on Tuesday next, at the opening of the court, or as soon thereafter as counsel can be heard, we will call up the above motion, and in support of it shall refer to the bill of complaint and

to the assignment now in the possession of the recorder of deeds in this district, purporting to have been made by the Emery Coal Company to the defendants Ross and Dean.

STANTON AND WORTHINGTON,
*Sol'c'rs for Compl'ts.*

I, Albert Harper, on oath say that I served a copy of the foreging motion and notice on the defendant Samuel Emery, junior, by leaving the same it his place of residence, No. 7 Grant place, on Saturday, July 21, 1877.

ALBERT HARPER.

Subscribed and sworn to before me this 24th day of July, 1877.
WM. C. HARPER, *J. P.* [L. S.]

I, Joseph Harper, on oath say that I served a copy of the foregoing motion and notice personally, on each of the defendants Samuel
46 Emery, senior, and Mills and Dean, and that I left a copy of said motion and notice at the residence of the defendant Sailer, No. 207 First street northwest. The service of all of said papers was made on Saturday, 21 July, 1877.

JOS. HARPER.

Subscribed and sworn to before me this 24th day of July, 1877.
WM. C. HARPER, *J. P.* [L. S.]

47 *Order appointing receivers.—Filed July* 24, 1877.

In the supreme court of the District of Columbia.

JOHN J. ALBRIGHT ET AL.
*vs.*
SAMUEL EMERY ET AL. } No. 5697. Eq. doc. 17.

This cause coming on to be heard upon the motion of the complainants for a preliminary injunction and for the appointment of a receiver, and having been argued by counsel for all the parties to the suit respectively, upon consideration thereof it is, this 24th day of July, 1877, ordered that Amzi L. Barber and Mills Dean be, and they are hereby, appointed receivers in this, and as such they are authorized and instructed
48 to take possession of all the assets of the Emery Coal Company and convert the same into money without unnecessary expense or delay, and to hold the proceeds of such assets till the further order of the court; provided that before entering upon their duties as such receivers they shall file in office of the clerk of this court a bond to the United States in the penal sum of fifteen thousand dollars, conditioned for the faithful performance of their duties as such receivers—the bond to be joined in by sureties to be approved by the court.

And it is further ordered that each of the defendants be, and is hereby, required to deliver up to said receivers any of the books, papers, money, securities, and assets of said Emery Coal Company which he may have in his possession, or which may be subject to his control, and that each of the defendants be, and he is hereby, enjoined from in any manner interfering with said receivers in the performance of their duties.

And it is further ordered that the sale which the defendants Ross and Dean in open court state has been advertised by them, of a portion of said assets, on the 26th of July, 1877, shall be made in accordance with said advertisement and the proceeds at once turned over to said receivers.

By the court.

ANDREW WYLIE.

49 Bond of A. L. Barber, one of the receivers in this case.

In the supreme court of the District of Columbia.

JOHN J. ALBRIGHT ET AL.
*vs.*
SAMUEL EMERY ET AL. } No. 5697. E'y doc. 17.

Know all men by these presents that we, Amzi L. Barber and Andrew Langdon, both of the District of Columbia, are held and firmly bound to the United States of America in the just and full sum of fifteen thousand dollars, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Whereas, by an order of said supreme court of the District of Columbia, passed in this cause on the 24th day of July, 1877, the above bounden Amzi L. Barber and Mills Dean were appointed receivers: Now, the
50 condition of this obligation is such that if said Barber shall faithfully perform his duties as such receiver without injury to any person interested, then this obligation is to be void, but not otherwise.

Witness our hands and seals this twenty-fourth day of July, 1877.

A. L. BARBER. [SEAL.]
A. LANGDON. [SEAL.]

Witness:
ALBERT HARPER.
Witness:
ALBERT HARPER.

I, Amzi L. Barber, on oath, say that I own real estate, or an interest therein, situated in the District of Columbia, worth over all encumbrances the sum of at least twenty thousand dollars.

A. L. BARBER.

Subscribed and sworn to before me this 24th day of July, 1877.

JNO. H. COOK, NOTARY PUBLIC, DIST. OF COLUMBIA.
JNO. H. COOK,
*Notary Public.*

I, Andrew Langdon, on oath, say that I own real estate, or an interest therein, situated in the District of Columbia, worth, exeluding en-
51 cumbrances and the interest owned by other persons, the sum of at least seventy thousand dollars ($70,000).

A. LANGDON.

Subscribed and sworn to before before me this 24th day of July, 1877.

JOHN H. COOK, NOTARY PUBLIC, DIST. OF COLUMBIA.
JNO. H. COOK,
*Notary Public.*

Approved:

A. WYLIE.

52 Bond of Mills Dean, one of the receivers.

In the supreme court of the District of Columbia, the 25th day of July, 1877.

JOHN J. ALBRIGHT ET AL.
*vs.*
SAMUEL EMERY ET AL.
} In equity. No. 5697. Docket 17.

Know all men by these presents that we, Mills Dean, Edward Owen and Samuel Emery, of the city of Washington, are held and firmly bound and acknowledge ourselves indebted to the United States in the just and full sum of fifteen thousand dollars, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Whereas, by an order of the supreme court of the District of Columbia, passed in this cause, on the 24th day of July, 1877, the above-bounden Mills Dean was appointed a receiver:

53 Now, the condition of this obligation is such that if the said Mills Dean shall faithfully perform his duties as such receiver, without injury to any person interested, then this obligation to be void, but not otherwise.

In testimony whereof the above-bounden parties have hereunto set their hands and seals this 25th day of July, 1877.

MILLS DEAN. [SEAL.]
E. OWEN. [SEAL.]
SAM'L EMERY. [SEAL.]

Witness:
ROGER WILLIAMS.

Approved:
A. WYLIE.

54 *Petition of Schwing and Hitchcock for modification of injunction and restraining order.*

In the supreme court of the District of Columbia, this 28th day of July. 1877.

JOHN J. ALBRIGHT ET AL., FIRM OF LANGDON, Albright and Co.,
*agst.*
SAMUEL EMERY, SENIOR, ET AL.
} In equity. No. 5697.

Your petitioners, Charles G. Schwing and James H. Hitchcock, are a firm doing business under the name and style of Schwing and Hitchcock, dealers in wood and coal, at 132 A st., SE., in this city; would respectfully show to this court that they are informed that such proceedings have been had in this court that by this court receivers have been appointed to take charge of the property of the Emery Coal Company, in this city, and an injunction order issued restraining all parties from any interference with the property of said company; that said receivers have entered upon the discharge of their duties and taken possession of all property in the possession of said coal company.

That among the property so taken and claimed by said receivers are $35\frac{1009}{2240}$ tons of white-ash stove coal.

That your petitioners, on the 10th day of May last, purchased of one W. Williams his interest in the coal yard now occupied by your petitioners, and, in connection with said yard, bought of said Williams 150 tons of coal, which coal had then been purchased by said Wliiams of the Emery Coal Company, and was at the yard of said company not then delivered.

That your petitioners, on the 4th day of July, 1877, and before the commencement of this suit, called upon the Emery Coal Company for the balance of said coal not then delivered your petitioners, and that E. E. Burroughs, one of the firm of the Emery Coal Co., and who had the coal-yard in charge belonging to said company, informed your petition-
56 ers that the balance of the 150 tons of coal so purchased by said Williams and transferred to your petitioners, which balance was the aforesaid $35\frac{1009}{2240}$ tons of white-ash stove coal, had been set apart for your petitioners, and was then in the yard of said company in a pile by itself, and the name of Hitchcock, one of your petitioners' firm, written upon a board and placed upon the pile of coal so set apart by said company as the property of your petitioners; and your petitioners aver that said coal now remains in the said company's yard set apart by itself with your petitioner's name, Hitchcock, written upon a board and placed on the said pile of coal to indicate the owner thereof.

Your petitioners further show that in May last they paid the said Emery Coal Company (after their purchase of said Williams of his interest in the yard now occupied by your petitioners) in full for all coal which the said Williams had purchased of said coal company, and that the 35 and $\frac{1009}{2240}$ tons was a part of your petitioners' purchase of said Williams.

57 Your petitioners therefore pray that the injunction or restraining order of this court so far as it relates to the 35 and $\frac{1009}{2240}$ tons of coal so marked and set apart by itself, may be so modified as to allow your petitioners to remove the same to their yard, and that the receivers appointed by this court be directed by an order of this court to deliver the said coal to your petitioners without delay.

Your petitioners, therefore, beg to be heard in this suit, and to be allowed to use, for the purposes of this motion, all papers and proceedings had herein now on file and of record so far as the same may be necessary to aid them in this their petition. Your petitioners pray for such other or further relief as this court shall think meet and proper to grant.

SCHWING AND HITCHCOCK,
By JAMES H. HITCHCOCK.

WM. B. HAWES,
*Solicitor.*

58 I, James H. Hitchcock, do solemnly swear that I have read the above petition subscribed by me, and know the contents thereof, and that the facts therein stated on my personal knowledge are true, and that the facts therein stated on information and belief I believe to be true.

JAMES H. HITCHCOCK.

Sworn and subscribed before me this 27th day of July, 1877.

R. J. MEIGS, *Clerk.*

59 *Petition for payment of wages due laborers.*

In the supreme court of the District of Columbia, the 28th day of July, A. D. 1877.

JOHN J. ALBRIGHT ET AL.
*vs.*
SAMUEL EMERY ET AL. } No. 5697. Eq. doc.

To the supreme court of the District of Columbia, holding an equity court for the said District.

The petition of Edward E. French, Henson Brook, John Dulany, E. Jasper, Robert Butler, Joseph Yerby, Paige Sanders, Charles Lewis, Charles Johnson, Michael Burke, O. D. Robinson, Haly, O'Connel, Joseph McGill, Frank Brown, John Collins, William Brooks, John Daniels, James Edlin, Robert Scott, Henry Washington, Zach. Simms, Richard Holmes, Wesley Jackson, A. Leopard, John Dulany, Joseph Woodward, Wallace Middleton, Thomas Dulany,
60 James Hall, and Edward Sykes respectfully sheweth unto your honors:

1st. That they are all residents of the District of Columbia.

2d. That the Emory Coal Company, composed of Samuel Emery, jr., Charles C. Sailer and Edward E. Burroughs, defendants in the above entitled cause, *and* indebted unto the above-named petitioners in the respective sums set opposite their names in the schedule marked "A" annexed hereto.

3rd. That the said sums are due your said petitioners as wages for days' work performed by them as ordinary laborers, save in the case of the petitioner French, who was clerk for said company, for the said company.

That said work was performed between the 1st and 19th days of July instant.

4th. That there was included in the assignment made to the defendants Ross and Dean, by the defendants Emery, Sailer, and Burroughs, articles exempted by law from execution, from the sale of which by the said assignees there has been realized in cash a sum exceeding the amount
61 due your petitioners and the expenses of the sale thereof.

5th. That your petitioners are advised that they are entitled in equity to the payment of their said wages out of said proceeds of sale of exempted property.

Your petitioners therefore pray—

1st. That their said wages may be ordered to be paid them out of the said fund.

2d. That they may have such other and further relief as may be proper and necessary in the premises.

3rd. That process issue to the receivers in said cause commanding them to shew cause, at a time to be named, why the prayer of this petition should not be granted.

EDWARD E. FRENCH.

Subscribed and sworn to before me this 28th day of July, A. D. 1877.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
*Ass't Clerk.*

| 62 | No. of days. | Rate per day. | Total am't. |
|---|---|---|---|
| TRIMMERS. | | | |
| Henson Brooks | 2 | 1 25 | 2 50 |
| John Delany | 2 | ..... | 2 50 |
| E. Jasper | 2 | ..... | 2 50 |
| Bob Butler | 2 | ..... | 2 50 |
| HIRED CARTS. | | | |
| Yerby, 1 | 3 6/10 | 2 00 | 7 30 |
| " 2 | 3 1/10 | ..... | 6 20 |
| " 3 | 2 5/10 | ..... | 5 20 |
| " 4 | 1 | ..... | 2 00 |
| Sanders, 1 | 3 1/2 | ..... | 7 00 |
| " 2 | 3 1/2 | ..... | 7 00 |
| " 3 | 1 | ..... | 2 00 |
| Lewis, 1 | 3 6/10 | ..... | 7 20 |
| " 2 | 3 11/20 | ..... | 7 10 |
| Johnson | 3 | ..... | 6 00 |
| Burk, 1 | 2 | ..... | 4 00 |
| " 2 | 1 8/10 | ..... | 3 80 |
| " 3 | 2 | ..... | 4 00 |
| " 4 | 8/10 | ..... | 1 00 |
| Robinson | 3/10 | ..... | 60 |
| Haley | 2 1/2 | ..... | 5 00 |
| O'Connell, 1 | 1 1/10 | ..... | 2 20 |
| " 2 | 1 1/10 | ..... | 2 20 |
| | | | 91 20 |
| 63 E. E. French | 20 | 1 00 | 20 00 |
| WATCHMEN. | | | |
| Jos. McGill | 19 | 1 66⅔ | 30 60 |
| Frank Brown | 1 | 1 25 | 1 25 |
| John Collins | 1 | ..... | 1 25 |
| DRIVERS. | | | |
| Frank Brown | 5 5/10 | 1 00 | 5 50 |
| William Brooks | 2 5/10 | 1 00 | 2 50 |
| John Collins | 2 5/10 | ..... | 2 50 |
| John Daniels | 5 5/10 | ..... | 5 50 |
| James Edeline | 5 5/10 | ..... | 5 50 |
| Robert Scott | 5 5/10 | ..... | 5 50 |
| Henry Washington | 4 5/10 | ..... | 4 50 |
| Zac Sims | 5 5/10 | ..... | 5 50 |
| Richard Holmes | 2 5/10 | ..... | 2 50 |
| LABORERS. | | | |
| Wesley Jackson | 10 | 1 00 | 10 00 |
| A. Lepphard | 3 2/10 | ..... | 3 20 |
| John Delany | 2 6/10 | ..... | 2 60 |
| Bob Butler | 2½ | ..... | 2 50 |
| James Woodward | 7/10 | ..... | 70 |
| Wallace Middleton | 11/20 | ..... | 55 |
| Tom Dulany | 2 13/20 | ..... | 2 65 |
| E. Jasper | 2 11/20 | ..... | 2 55 |
| James Edeline | 9/10 | ..... | 90 |
| W. Brooks | 1 6/10 | ..... | 1 60 |
| Jas. Hall | 5/10 | ..... | 50 |
| DRIVERS. | | | |
| Ned Sykes | 5 5/10 | ..... | 5 50 |

64 *Order for payment of wages.*

In the supreme court of the District of Columbia, the 30th day of July, A. D. 1877.

ALBRIGHT ET AL.
*vs.*
EMERY ET AL. } No. 5697. Eq. doc.

Upon motion of Mr. Perry, of counsel for French et al., and upon reading the petition of said French and others, it is ordered that the clerk of the court, out of any funds to the credit of the said cause, pay forthwith to the said petitioners, or their said solicitor, the sum of $216.05 due said petitioners for labor and wages.

By the court:

A. W.

We consent to this decree.

MILLS DEAN, *Receiver.*
A. L. BARBER, *Receiver.*
STANTON AND WORTHINGTON,
Per HEALD, *For Compl'ts.*

65 *Report of Ross and Dean, assignees.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL.
*vs.*
EMERY ET AL. } No. 5697. Equity.

The defendants John W. Ross and Mills Dean, assignees, respectfully report that prior to the appointment of receivers in this cause by the court they collected the sum of $37.50, money due the Emery Coal Co. on book accounts, and incurred expenses to the amount of $37.77, as will appear by reference to Exhibit M. D. No. 1, hereto annexed.

That in obedience to the order of the court made the 24th day of July, 1877, they sold at public auction the live stock and stable fixtures as directed in said order. A detailed account of said sale is hereto annexed, marked "Exhibit M. D. No. 2."

66 That said sale was fairly conducted and the articles sold brought good prices.

That Exhibit M. D. No. 3, hereto annexed, shows the balance in hands of assignees after paying expenses to be $1,605.35.

They respectfully pray the court to allow them a reasonable compensation for their services.

Respectfully submitted.

JOHN W. ROSS,
MILLS DEAN,
*Assignees Emery Coal Co.*

Mills Dean, being sworn, upon his oath says that the facts set forth in the foregoing report are true, and that the exhibits hereto annexed are true statements.

MILLS DEAN.

Sworn to before me this 30th day of July, 1877.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
*Ass't Clerk.*

67 EXHIBIT M. D. No. 1.

*John W. Ross and Mills Dean, assignees of the Emery Coal Co.*

RECEIPTS.

| | | |
|---|---|---|
| 1877. | | |
| July 20. | Rec'd from Crawford, % Dr. Burrough | $3 50 |
| " " | Gen'l Anderson | 9 00 |
| " " | Mrs. N. Wiard | 25 00 |
| | Total | $37 50 |

EXPENSES.

| | | |
|---|---|---|
| July 20. | Recording deed of assignment | $2 25 |
| " " | 1 blank book | 40 |
| " " | R. O. Polkinhorn (circulars) | 2 50 |
| " 27. | E. E. French (day watch.), 8 d's | 8 00 |
| " " | Joseph McGill (night " ), 8 " | 13 20 |
| " " | Advertising in Star | 4 50 |
| " " | " " Republican | 2 25 |
| " " | " " Critic | 4 67 |
| | Total | $37 77 |

68 EXHIBIT M. D. No. 2.

*Account of sales for John W. Ross and Mills Dean, assignees of the Emery Coal Co.*

WASHINGTON, D. C., *July 26th*, 1877.

| | |
|---|---|
| 1 bay horse | $38 00 |
| 1 mule | 108 00 |
| 1 " | 146 00 |
| 1 " | 100 00 |
| 1 " | 106 00 |
| 1 " | 125 00 |
| 1 " | 175 00 |
| 1 " | 105 00 |
| 1 " | 114 00 |

| | | |
|---|---|---|
| 1 " | | 100 00 |
| 1 " | | 81 00 |
| 1 " | | 26 00 |
| 1 " | | 21 00 |
| 1 cart | | 16 00 |
| 1 set harness | | 2 00 |
| 1 cart | | 15 00 |
| 1 set harness | | 6 00 |
| 1 cart | | 21 00 |
| 1 set harness | | 6 25 |
| 1 cart | | 18 00 |
| 69 · 1 set harness | | $5 75 |
| 1 cart | | 13 50 |
| 1 set harness | | 4 62 |
| 1 wagon | | 26 00 |
| 1 double set harness | | 14 00 |
| 1 cart | | 29 00 |
| 1 set harness | | 5 75 |
| 1 cart | | 15 00 |
| 1 set harness | | 3 00 |
| 1 cart | | 15 00 |
| 1 set harness | | 7 50 |
| 1 cart | | 27 00 |
| 1 " | | 12 50 |
| 1 " | | 13 50 |
| 1 set harness | | 4 50 |
| 1 cart | | 26 00 |
| 1 set harness | | 3 00 |
| 1 cart | | 25 00 |
| 1 set harness | | 11 50 |
| 1 cart | | 14 50 |
| 1 set harness | | 3 00 |
| 1 cart | | 17 00 |
| 1 set harness | | 5 00 |
| 1 cart | | 37 00 |
| 1 set harness | | 4 75 |
| 1 lot racks | | 1 00 |
| 1 lot shovels and forks | | 1 50 |
| 1 " harness | | 7 00 |
| 70 1 lot curry-combs, buckets, &c | | 8 00 |
| 1 " standards and racks | | 4 00 |
| 1 box axle grease | | 2 75 |
| 2 water buckets and sinks | | 2 25 |
| 12 shovels | | 4 00 |
| 1 cutting machine | | 17 00 |
| 1 p. measure | | 25 |
| | | $1, 720 37 |

| | | |
|---|---|---|
| Commission, &c | 86 00 | |
| Advert. in Evening Star | 13 13 | |
| " " Republican | 14 62 | |
| Bell man | 1 | |
| | | 114 75 |
| | | $1,605 62 |

71 EXHIBIT M. D. No. 3.

| | |
|---|---|
| Amount received from collections by John W. Ross & Mills Dean, assignees of the Emory Coal Co., as per Exhibit No. 1 | $37 50 |
| Am't from sale of stock, Exhibit No. 3 | 1,605 62 |
| Total receipts | $1,643 12 |

EXPENSES.

| | |
|---|---|
| As per Exhibit No. 1, $37.77 | 37 77 |
| Bal. on hand | $1,605 35 |

Mills Dean, being sworn, says that the above statement is correct.

MILLS DEAN.

Sworn to before me this 30th day of July, 1877.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
*Ass't Clerk.*

| | |
|---|---|
| Bal. in hands of assignees | $1,605 35 |
| Allowance to " | 82 15 |
| To be paid into c't | $1,523 20 |

72 *Order for payment of money in registry of court by assignees.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL. *vs.* EMERY ET AL. } No. 5697. Equity.

Upon hearing the report of the defendants John W. Ross and Mills Dean, assignees, made in this cause on 28th day of July, 1877, it is, this 28th day of July, 1877, ordered that the said assignees pay out of the funds shown to be in their hands the expenses incurred by them, as per Exhibit M. D. No. 1 annexed to their said report; that said assignees be, and are hereby, allowed five per cent. on the amount of money received by them, as shown by Exhibit M. D. No. 3 annexed to the report of said assignees, to wit, $1,643.12, and that said assignees pay the balance in their hands, to wit, $1,523.20, into the registry of the court.

By the court:

A. W.

73. *Petition of Reuben Collins.*

In the supreme court of the District of Columbia.

JNO. J. ALBRIGHT ET AL. vs. SAM'L EMERY ET AL. } No. 5697. Eq. doc. 17.

To the honorable the justice of the supreme court aforesaid holding an equity court for said District:

The petition of Reuben Collins, of the city of Washington, in said District, respectfully shows unto the court:

1st. That he is engaged in the retail wood and coal business in said city, and that whilst so engaged, to wit, on the 10th day of May, 1877, the Emery Coal Company, composed of the defendants Emery and Burroughs, proposed in writing to petitioner to sell him 600 tons of coal, to be delivered from the wharf or yard of said company as wanted by petitioner; and thereupon petitioner accepted said proposition to the
74 extent of 400 tons of coal, @ $3.75 per ton, and purchased that quanty of white-ash coal, and executed and delivered to said company, in accordance with their proposition, his promissory note for $1,500.00, payable four months after said date; and thereupon, by virtue of the aforesaid bargain and sale, petitioner became the owner of the said 400 tons of coal, which were then, and, with the exception hereinafter stated, are now, in the yard of said company, where the same were left with a view to convenience in delivering to petitioner's customers, and to save the expense of double hauling, and in accordance with the usage of the trade.

2d. Petitioner farther shows, that subsequent to the aforesaid date he delivered to his customers from the yard of the aforesaid company about 93 tons of said coal so purchased by him as aforesaid, amounting in value according to the price at which he purchased the same to $408.60; and he is informed and believes, and accordingly avers, that the remainder
75 of said coal so purchased by him as aforesaid, to wit, 303 tons, is now in the yard of said company separated from the residue of the coal therein, and known and recognized by said company as the exclusive property of the petitioner by virtue of the aforesaid bargain and sale. Yet so it is, may it please, to wit, that at the instance of the complainants in this cause all the coal found on the wharf or in the yard of said company has been seized and is now held by the receivers herein, Messrs. Barber and Dean, including as well that owned by said company as that owned by petitioner as aforesaid, and said receivers acting, as petitioner is informed, under the advice of counsel of complainants, refuse to deliver to petitioner or to allow him to remove the coal so purchased as aforesaid.

Petitioner further shows unto your honor that the aforesaid promissory note for $1,500, executed and delivered by him to said company in
76 consideration of the purchase of said coal, has been delivered by said company to the complainants in consideration of an antecedent indebtedness due by said company to them, and said note is now held by the complainants, or one of them, viz, the complainant, Jno. J. Albright.

Petitioner further states that the members of said Emery Coal Co., to wit, the defendants , ,

, are well aware of the facts hereinbefore stated, and petitioner believes that an entry of said purchase by him appears upon the books of said company, and he files herewith, marked "Exhibit R. C.," the original proposition of said company and their receipt for his note of $1,500, and the same are made part hereof.

Petitioner therefore prays:

1. That an order may be passed by this honorable court directing said receivers forthwith to deliver unto the petitioner the said tons of white-ash coal so purchased by him as aforesaid; and,

77 2. That he may have such other and further relief in the premises as the nature of the case may require and as to the court may appear proper.

R. COLLINS.

I do solemnly swear that I have heard read the foregoing and annexed petition by me subscribed, and know the contents thereof; that the facts therein stated on my personal knowledge are true, and those stated on information and belief I believe to be true.

R. COLLINS.

Subscribed and sworn to before me this 28th day of July, A. D. 1877.

R. J. MEIGS, *Clerk.*

Let this petition be filed in this cause.

A. WYLIE.

78 *Petition of U. S.*

In the supreme court of the District of Columbia, this 30th day of July, 1877.

JOHN J. ALBRIGHT, WILLIAM E. BARKER, Andrew Langdon
*vs.*
SAMUEL EMERY, SR., SAMUEL EMERY, JR., Charles C. Sailer, Edward E. Burroughs; John W. Ross, Mills Dean, assignees. } In equity. No. 5697.

The United States of America by H. H. Wells, its counsel, comes into court and respectfully represents that heretofore, and on the seventh day of June, 1877, it purchased from the Emery Coal Co. a large amount of coal, to wit, about one thousand tons. That the said United States received a voucher for the said coal and paid for the same in full by a draft upon its Treasury, dated June 8th, 1877.

79 That at the time of said sale it was conditioned that the said coal should be stored in the yard of the Emery Coal Company and be removed therefrom in such quantities and at such times as the United States should see fit.

That the said coal was regularly weighed and inspected and placed in a separate pile in the said yard and delivered to the United States, and an employé of the United States put in charge thereof.

Your petitioner further represents that the receivers of the said Emery Coal Company, appointed under a decree of this court, have refused, and still do refuse, to allow the said United States to remove their said coal without an order of this honorable court. Wherefore your petitioner prays that the said receivers, Mills Dean and A. L. Barber, be directed and instructed to allow your petitioner to remove its said coal, and to throw no obstacles in its way.

H. H. WELLS, *U. S. Att'y.*

Leave to file granted.

A. WYLIE.

80 *Partial report, No. 1, of the receivers.*

In the supreme court of the District of Columbia.

JOHN J. ALBRIGHT ET AL.
*vs.*
SAMUEL EMERY, SR., ET AL. } Equity. 5697.

To the supreme court of the District of Columbia in special term in equity:

The receivers, duly appointed and qualified in the above-mentioned cause, beg leave of your honorable court to submit this their partial report:

1. Under the order of our appointment we proceeded at noon of Wednesday, the 25th inst. to the yard and wharf of the Emery Coal Company, at the foot of Sixth street SW. in Washington City, and took possession of the same, and appointed trusty watchmen to guard the property of the company, with instructions to allow no one to take any property of any kind
81 away from said yard and wharf without the proper order of this court. The several gates to said yard and wharf were closed and locked, and the keys placed in the custody of our watchmen. We took possession of all the books and papers of the company in the premises, and at once removed the same to the office of A. L. Barber, receiver, in Le Droit Building, corner of 8th & F sts., NW., of said city.

2. The sale at public auction under the assignees, Messrs. Ross and Dean, as directed in the order appointing receivers, took place on Thursday, the 26th instant, a report of which will be submitted to the court by said assignees.

3. On taking possession of said yard and wharf we found in each of them large quantities of coal of various kinds and sizes distributed in different piles. The best information which we have been able to obtain concerning this coal is set forth in the affidavit of Edward E. French
82 hereto appended, marked "A. L. B. and M. D., Exhibit A." We also append a statement of the accounts of certain parties claiming delivery of coal as shown by the books of the Emery Coal Company, marked "A. L. B. and M. D., Exhibit B," and we produce the books of said company from which said statement is taken.

4. We respectfully ask for the instructions of this honorable court as to what disposition shall be made by us as receivers of the coal now remaining on said yard and wharf.

A. L. BARBER, *Receiver.*
MILLS DEAN, "

83 EXHIBIT A.—*A. L. B. and M. D.*

*Statement of coal weighed out at the Emery Coal Company's wharf and yard, as hereinafter described.*

| Day weighed out. | On whose acc't supposed to be. | Kind of coal. | Pounds. | Tons and pounds. | Total. |
|---|---|---|---|---|---|
| 1877. | | | | | |
| July 21 | William Sibrey | Red-ash stove | 37,080 | 16 1240 | 16 1240 |
| * July 16 | H. K. Wood and Co | Chestnut | 24,940 | 11 300 | 11 300 |
| July 20 and 21 | Thomas K. Gray | Steamboat | 106,750 | 47 1470 | 47 1470 |
| July 23 | Thwing and Hitchcock | Red-ash stove | 29,990 | 13 870 | 13 870 |
| July 21 | Isaac Kline | Lykens-valley stove. | 116,590 | 52 110 | |
| " 25 | do. do. | Steamboat | 38,420 | 17 340 | 69 450 |
| July 23 | W. D. Simmons | Shamokin stove | 22,640 | 10 240 | |
| " 25 | do. do. | Lykens-valley stove. | 18,580 | 8 660 | |
| " 23 and 24 | do. do. | Steamboat | 141,830 | 63 710 | 81 1610 |
| July 23 and 24 | A. Reed | Steamboat | 112,720 | 50 720 | |
| " 21 and 23 | do. do. | Red-ash stove | 124,090 | 55 890 | |
| July 23 | do. do. | Lykens-valley stove. | 34,170 | 15 570 | 120 2180 |
| July 21 and 23 | R. Collins | Steamboat | 215,280 | 96 240 | |
| " 20 and 21 | do. do. | Lykens-valley stove. | 121,610 | 54 650 | |
| " 20 | do. do. | Shamokin Stove | 57,240 | 25 1240 | |
| " 20 | do. do. | Chestnut | 10,530 | 4 1570 | |
| " 20 | do. do. | White-ash furnace | 21,690 | 9 1530 | 190 750 |
| | | | 1,234,150 | 550 2150 | 550 2150 |

* Weighed out as stated on 16th instant., but not designated as belonging to H. K. Wood & Co. till several days after.

84 *Affidavit of Edward E. French.*

DISTRICT OF COLUMBIA, *ss:*

I, Edward E. French, being duly sworn, do depose and say that I am seventeen years old; that I have constantly been in the employment of the Emery Coal Company at their wharf and yard, foot of Sixth street, Washington, D. C., from the 1st of November, A. D. 1876, until the 17th day of July, A. D. 1877; that my duties while in their employ consisted principally in weighing out the coal for delivery to customers; that Samuel G. Burrough, brother of Edward E. Burrough, was the book-keeper and principal clerk of the said company; that I was accustomed to receive orders from him as well as from the members of the firm; that on the 16th day of July of said year there was about fifteen hundred tons of coal of various kinds and sizes on the wharf and in the yard of said company at the foot of Sixth street aforesaid, and was the property of said company; that of said coal about two hundred and fifty tons was in the yard
85 on the east side of said Sixth street and the remainder, or about twelve hundred and fifty tons, was on the wharf distributed in bins according to sizes as it had been unloaded from the vessels; that of the coal in the yard about one hundred and fifty tons of Lykens Valley egg coal had been weighed, and the remainder, being about one hundred tons of red-ash coal, had not been weighed, but had been deposited as it was unloaded from the vessel; that none of the coal upon the wharf had at that time been weighed or separated for delivery to customers; that on or about the said 16th day of July I began weighing the coal on the wharf and depositing it in piles in the yard according to sizes; that at the same time, and also on the 17th and 18th until noon we continued so weighing and distributing, at the same time weighing and sending coal away to

customers, and until the Government inspector, Mr. Thomas M. Blakely, came and stopped the delivery of coal to customers, and nothing was done that afternoon, viz, July 18th. On the 19th instant we began
86 weighing coal from the wharf and depositing in piles in the yard as before, and so continued until Friday or Saturday, the 20th or 21st of July; that I was informed (by whom I don't remember) that the piles in the yard were to be delivered to the Government; that the weighing of the said coal was done by myself and Mr. Sam. Burrough, and the tally-lists were taken to Col. Rockwell after the weighing was completed, as I am informed and believe; that while said weighing was in progress no tally-lists were kept by any one except Sam. Burrough and myself, and that portions of the time there was no one present to represent the Government. After this we kept on weighing coal, taking it from the wharf as before stated, and after weighing it we put it in separate piles on the wharf again, a statement of which is before given, which I swear to be correct, showing the days when the quantities and kinds of coal weighed and the names of the parties for whom I was told to weigh the coal. Besides the coal weighed out and put in piles for the Government,
87 amounting, I think, to one thousand tons, or nearly that, and the coal named in the statement above referred to and hereto appended, there is no coal on the wharf or in the yard except a few pounds of various sizes in small bins at the scales used for trimming carts. From the 18th day of July until the 25th day of July I was in the employ of the assignees, Messrs. Ross and Dean. Mr. A. L. Barber and Mr. Mills Dean came and took possession of the yard and wharf at noon on the 25th of July, and I remained in their employ as day watchman until the 27th of July, when I was discharged. We had just finished weighing all the coal when Messrs. Barber and Dean came and took possession as aforesaid.

EDWARD E. FRENCH.

Subscribed and sworn to before me this 28th day of July, A. D. 1877.

JOHN H. COOK,
*Notary Public.*

88 A. L. B. AND M. D., EXHIBIT B.

*Transcript from Emery Coal Co.'s ledger of the following accounts, as they appeared when they came into the possession of A. L. Barber and Mills Dean, receivers, July 25th, A. D. 1877.*

| | | Dr. | Cr. |
|---|---|---|---|
| | WM. SIBREY. | $ | $227 44 |
| June 30 | By old ledger | | |
| " " | To m'ch'd'ze | 121 90 | |
| July 17 | " " | 27 | |
| | | | 148 90 |
| | | | 78 54 |
| | H. K. WOOD AND CO. | | |
| June 30 | By old ledger | | 51 85 |
| July 2 | " " June acc't | | 40 |
| | | | 52 25 |
| June 30 | To m'ch'd'se | 15 40 | |
| | | | 15 40 |
| | | | 36 85 |
| | ISAAC KLINE. | | |
| June 30 | By old ledger | | 764 81 |
| July 2 | " " June a/c | | 15 37 |
| | | | 780 18 |
| June 30 | To m'ch'd'se | 212 72 | |
| July 17 | " " | 194 62 | |
| " 18 | " " | 4 65 | |
| | | | 411 99 |
| | | | 368 19 |
| 89 | THOS. K. GRAY. | | |
| June 30 | By old ledger | | 641 45 |
| July 2 | " " June a/c | | 24 75 |
| | " B. R. Andrews | | 361 46 |
| | | | 1,027 66 |
| June 30 | To m'ch'd'se | 319 90 | |
| July 3 | " cash loan | 80 05 | |
| | " | 281 41 | |
| " 17 | " m'ch'd'se | 168 50 | |
| | | | 849 86 |
| | | | 177 80 |
| | W. D. SIMMONS | | |
| June 30 | By old ledger | | 500 00 |
| July 2 | " " June a/c | | 10 49 |
| | | | 510 49 |
| June 30 | To m'ch'd'se | 131 97 | |
| July 17 | " " | 32 07 | |
| " 18 | " " | 7 50 | |
| | | | 171 54 |
| | | | 338 95 |
| | A. REED. | | |
| June 30 | By old ledger | | 614 79 |
| " " | To m'ch'd'se | 34 87 | |
| July 17 | " " | 34 09 | |
| | | | 68 96 |
| 90 | | | 545 83 |
| | R. COLLINS. | | |
| July 2 | By old June a/c | | 6 60 |
| " 16 | " " Apr. & May | | 11 15 |
| June 30 | " bal. old ledger | | 1,044 30 |
| | | | 1,062 05 |
| June 30 | To m'ch'd'se | 141 31 | |
| July 17 | " " | 15 50 | |
| | | | 156 81 |
| | | | 905 24 |

91 *Petition of Isaac Kline for replevin vs. receivers.*

In the supreme court of the District of Columbia, July 28th, 1877.

ALBRIGHT, JOHN J., BARKER, WILLIAM E., Langdon, Andrew.
*vs.*
EMERY ET AL. } Equity. No. 5697.

The petition of Isaac Kline represents that he is a resident of the city of Washington, in the District of Columbia, and is a retail dealer in wood and coal therein; that on the 20th day of April, 1877, he purchased from the Emery Coal Co. three hundred tons of coal, to be delivered as he might want it, and gave in payment his promissory note for twelve hundred and fifty-five dollars at three months, with the privilege of renewing the same for an additional three months; that said Emery Coal Com-
92 pany was a large dealer in coal at that time, and it was then and still is usual among retail dealers like the petitioner to buy considerable quantities of coal from the large dealers and leave the same in the yard of the vender until it is needed for distribution from time to time among their customers, and petitioner purchased said coal with that understanding and agreement; that he removed of said coal from time to time between the 20th day of April, 1877, and the 18th day of July, of same year, 130 tons and 126 pounds, leaving a balance of 169 tons and 2,114 pounds yet to be removed; that before the appointment of receivers, or the filing of the bill in this cause, said coal had been weighed and placed in a separate pile for petitioner by said company, and is still so separated. Yet so it is, may it please the court, that said receivers declare that the petitioner shall not remove his coal purchased as aforesaid, and claim that it became vested in them by virtue of their appointment as receivers by this court.

Your petitioner further avers that said complainants have pos-
93 session of his said promissory note, and claim the same was transferred to them in the regular course of business for value; that they demand payment for the entire amount thereof, notwithstanding they well know that he has not received nearly one-half the consideration therefor, and he has paid seven hundred dollars beside interest thereon, and is ready and willing to comply fully with his agreement of purchase of said coal.

Your petitioner avers that he purchased said coal in good faith and is abundantly able to pay for the same; that it is customary in this city for retail dealers to purchase coal in quantities and leave it in the yard of the vender until needed for the purchaser for distribution among his customers.

The petitioner files herewith the agreement aforesaid, marked Exhibit "I. K.," and prays that said receivers be directed to surrender said coal to the petitioner or that petitioner have leave to implead them on the law side of this court in an action of replevin to try the title to said coal, and petitioner also prays for general relief.

I. KLINE.

Sworn to & subscribed before me this 28th day of July, 1877.
R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

94 *Affidavit of E. E. Burrough.*

I, E. E. Burrough, do affirm that I was one of the members of the Emery Coal Co. now impleaded in the equity court at the suit of Langdon, Albright and Co. That on the 20th day of April, 1877, I, as business manager of said company, sold to Isaac Kline three hundred tons of coal, and took his promissory note for $1,255.00 therefore, at three months; that it was agreed that said note might be renewed for 90 days on payment of interest; that said note was passed over to Langdon, Albright & Co. who had supplied us with coal.

I further on affirmation say, that the coal belonging to said Kline is in separate piles or parcels on said company's wharf and yard and is so marked; that it is customary among wholesale dealers to allow retail dealers in coal to leave their coal upon the wharves or in the yards of the wholesale dealers until they (the retail dealers) want it for distribution among their customers.

The following-named persons have purchased coal under the
95 same circumstances and conditions, substantially, to wit:

Reuben Collins, W. D. Simmons, William Sibrey, H. K. Wood and Co., Thwing and Hitchcock, Thomas K. Gray, and Augustine Reed.

The coal belonging to above parties is in separate piles in yard and wharf, and marked.

E. E. BURROUGH.

Personally appeared before me this 28th day of July, 1877, the above-subscribed E. E. Burrough, and affirmed under the penalties of perjury that the foregoing statements by him subscribed are true.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

96 *Leave to bring replevin by Isaac Kline.*

In the supreme court of the District of Columbia, this 31st day of July, 1877.

ALBRIGHT ET AL. *vs.* EMERY ET AL. } Equity. No. 5697.

The petition of Isaac Kline coming on to be heard, and having been duly considered by the court, it is this 31st day of July, 1877, ordered that the petitioner have leave to implead the receivers in this case on the law side of this court, in an action of replevin to obtain possession of, and try title to the coal mentioned in his petition.

By the court:

A. W.

97 *Order allowing Reuben Collins to institute replevin.*

In the supreme court of the District of Columbia.

ALBRIGHT *vs.* EMERY ET AL. } No. 5697. Eq. doc. 17.

Upon consideration of the petition of Reuben Collins, filed in this cause, it is, this 31st day of July, A. D. 1877, ordered, that the said Reuben Col-

lins be, and he hereby is, authorized and permitted to institute an action of replevin against the receivers heretofore appointed in this suit to recover possession of the coal claimed in said petition as his property, or so much thereof as may be in the possession of said receivers.

By the court:

A. W.

98 *Petition of Wm. Sibrey to bring replevin.*

In the supreme court of the District of Columbia, July 31st, 1877.

ALBRIGHT ET AL. *vs.* EMERY ET AL. } Equity. No.

The petition of William Sibrey, of the city of Washington, District of Columbia, represents that on the 4th day of April, 1877, he purchased from the Emery Coal Company coal of the value of $744.00, to be delivered as he needed it, to supply his customers; that of said coal there is now in the yard of said company about eighteen tons, which has been separated, as he is advised, from the mass of coal therein and indicated by his name thereon; that the receivers appointed by the court claim they have the possession of said coal and refuse to deliver it to affiant, and he therefore prays the court for leave to bring his action of replevin on the law side of this court against said receivers, to secure said coal.

WM. SIBREY.

Sworn to and subscribed before me this 31st day of July, 1877.

ROBT. V. HUGHES, *J. P.* [SEAL.]

99 *Leave to Sibrey to bring replevin.*

In the supreme court of the District of Columbia, this 31st day of July, 1877.

ALBRIGHT ET AL. *vs.* EMERY ET AL. } Equity. No. 5697.

The petition of William Sibrey coming on to be heard, and having been duly considered by the court, it is, this 31st day of July, 1877, ordered that the petitioner have leave and is permitted to bring his action of replevin on the law side of this court against the receivers, to try title to the coal mentioned in this petition.

By the court:

A. W.

100 *Order allowing U. S. to remove coal.*

In the supreme court of the District of Columbia, the 31st day of July, 1877.

JOHN J. ALBRIGHT, WILLIAM E. BARKER, Andrew Langdon
*vs.*
SAMUEL EMERY, SR., SAMUEL EMERY, JR., Charles C. Sailer, Edward E. Burroughs; John W. Ross, Mills Dean, assignees.
} In equity. No. 5697.

It appearing to the court that the receivers appointed under the decree of this court, to hold and retain the property of the Emery Coal Company, and to make such disposition thereof as the court shall direct, now hold under their control a large amount of coal belonging to the United States in the yard where it is stored, and which coal has been bought, paid for, delivered, and transferred to the United States. And it further
101 appearing that the said Emery Coal Company is insolvent, and the United States, as creditor, would be entitled to priority of payment from the assets of said company, in case said coal were treated and disposed of as the property of said firm, and costs and circuity of action would be prevented if the United States were permitted to take the coal so paid for as aforesaid, it is ordered that the said receivers do permit and allow the officers of the United States, or such persons as they may designate to remove the said coal to such place as they may deem proper and at such times as they may deem fit in accordance with the original agreement entered into between the United States and the Emery Coal Company.

By the court:

A. W.

102 *Order for receivers to sell all coal in their possession.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL.
*vs.*
EMERY ET AL.
} No. 5697. Equity.

Upon hearing the report of the receivers made July 30th, 1877, in this cause, it is, this 31st day of July, 1877, ordered that said receivers proceed to sell at public auction all coal in their possession, except the coal belonging to the United States, and except such coal as may be taken by action of replevin with permission of this court, and that in all other respects they proceed as directed in the order in this cause made on the 24th day of July, 1877.

By the court:

A. W.

103 *Order for receivers to deliver to marshal certain goods and chattels.*

In the supreme court of the District of Columbia. In equity, this 2d day of August, 1877.

JOHN F. ALBRIGHT ET AL.
*ag'st*
SAMUEL EMERY ET AL. } Equity. No. 5697.

This cause coming on to be further heard upon the petition of Thwing and Hitchcock, read and filed herein, after hearing Wm. B. Hawes, att'y for petitioners, and Messrs. Dean and Barber, for the pl'ffs:

It is ordered that the restraining order issued in this cause be, and the same hereby is, so modified as to allow the receivers to be sued on the claim of Thwing and Hitchcock in respect to the coal claimed by them in their petition in this cause.

A. WYLIE.

104 *Replication.—Filed Aug.* 3, 1878.

The plaintiffs hereby join issue with the defendants.

WORTHINGTON & HEALD,
*Of Counsel for Plaintiffs.*

105 *Petition of Thomas K. Gray for leave to bring replevin.*

In the supreme court of the District of Columbia, July 31st, 1877.

ALBRIGHT ET AL.
*vs.*
EMERY ET AL. } Equity. No. .

The petition of Thomas K. Gray represents that he is a retail dealer in coal in Washington City, D. C., and, as such, on the day of April, 1877, he purchased coal to the amount of $990.00, with permission to leave it in the yard of the Emery Coal Company until it should be needed by him to supply his customers; that he took therefrom, from time to time, as his business required it, all of said coal, excepting about forty tons thereof, which still remains in the yard of said company, and is claimed by the receivers appointed in this cause. Said coal is in a separate pile or parcel,
and is marked with petitioner's name, and was so separated and
106 marked before said receivers were appointed, as he is advised, believes, and charges, yet the said receivers refuse to permit him to take said coal, and he therefore prays for leave to bring an action of replevin against said receivers to obtain possession of said coal and try the title thereto.

THOS. K. GRAY.

Sworn to and subscribed before me this 31st day of July, 1877.

F. M. HUNTER,
*Justice of the Peace.*

*Order allowing Thos. K. Gray to sue receivers.*

In the supreme court of the District of Columbia.

J. J. ALBRIGHT ET AL.
*vs.*
EMERY ET AL. } Equity. No. 5697.

On consideration of the petition of Thos. K. Gray filed herein, praying for leave to bring his action of replevin against the receivers in this cause, to obtain possession of certain coal, ordered, this 6th day of August, 1877, that the prayer of said petition be, and the same is hereby, granted.

By the court:

A. WYLIE, *Justice.*

107 *Order allowing Augustine Reed to sue, &c.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL.
*vs.*
EMERY ET AL. } Eq. No. 5697.

Ordered, this 6th day of August, 1877, that Augustine Reed be allowed to bring such suit on the law side of this court against the receivers in this cause as his counsel may advise.

By the court:

A. W.

108 *Petition of John Van Riswick.*

In the supreme court of the District of Columbia.

J. J. ALBRIGHT ET AL.
*vs.*
SAMUEL EMERY, SR., ET AL. } No. 5697. Eq. doc.

To the supreme court of the District of Columbia, holding an equity court for said District:

The petition of John Van Riswick sheweth as follows:

1. That your petitioner is a resident of the city of Washington, in the District of Columbia, and owner of lots 12, 13, and 26 in square No. 503, and the wharf, wharf privileges, and improvements fronting said lots 12 and 13, in said city and District.

2. That heretofore, to wit, on the 30th day of December, A. D. 1874, your petitioner leased said premises to Samuel Emery, sr., one of the defendants in the above-entitled cause, for a term of five years from the first day of January, A. D. 1875, at a rental of twelve hundred
109 dollars for the first year of said term, and fifteen hundred dollars for each of the remaining years thereof, payable in quarterly payments on the last day of each and every quarter of a year in said term.

3. That thereafter, to wit, on the day of , A. D. 187 , the defendants in said cause, E. L. Burrough, Charles C. Sailer, and Samuel Emery, junior, comprising the partnership firm known as the Emery Coal Company, became the assignees of the said term, and, as such assignees, became, and still are, in default in payment of the rent of said premises for the quarter ending the 30th day of June, A. D. 1877, in the sum of three hundred and seventy-five ($375.00) dollars, no part of which said rent has been paid or in any manner satisfied unto your petitioner.

4. That thereafter, to wit, on the day of , 1877, during the continuance of your petitioner's statutory lien upon the stock and fixtures of the said Emery Coal Company, upon said premises for
110 the rent so as aforesaid due unto your petitioner, said stock and fixtures were sold by the receivers appointed by this honorable court in the above-entitled cause, and the proceeds of said sale, as your petitioner is informed and believes, were paid into the registry of this honorable court, where, as your petitioner is advised, his lien as landlord ought in equity and of right to follow them.

Wherefore your petitioner prays that by order of this honorable court the said sum of three hundred and seventy-five dollars, due as aforesaid unto your petitioner, as rent of said described premises for the quarter ending the 30th day of June, 1877, may be directed to be paid unto your petitioner out of the proceeds of said sale, now in the registry of this honorable court as aforesaid.

And that your petitioner may have such other relief as the nature of his case may require.

JOHN VAN RISWICK.

I, John Van Riswick, do solemnly swear that I have read the
111 above petition by me subscribed, and know the contents thereof; that the matters and things set forth upon my own personal knowledge are true, and that those set forth upon information and belief I believe to be true.

JOHN VAN RISWICK.

Sworn to and subscribed before me this 27th day of August, 1877.

*Partial report, No. 2, of the receivers.*

In the supreme court of the District of Columbia.

JOHN J. ALBRIGHT ET AL. *vs.* SAMUEL EMERY ET AL. } 5697. Equity doc. 17.

The receivers, A. L. Barber and Mills Dean, respectfully report that, acting under the order of this court, passed July 24th, 1877, they caused the real estate situated at the northeast corner of 7th and A streets SE.,
112 in the city of Washington, D. C., consisting of a brick house and a lot about 20 ft. x 90 ft., to be advertised and offered for sale at public auction on the 14th day of August, 1877; that the attendance at said public sale was unusually large; that said property was offered subject to existing encumbrances of about $3,020; that no valid bid whatever was

made, and we therefore withdrew the property; that we have this morning received from Mr. Nute a proposition for the purchase of said property for the sum of five hundred dollars, the purchaser in addition to assume all existing encumbrances, said $500 to be paid in sums of $50 per month (excepting two months, September and October, when the purchaser will pay the interest on the first deed of trust, amounting to $121); that we believe the interests of all parties will be promoted by accepting the proposition. We therefore ask the order of this honorable court in the premises.

A. L. BARBER,
MILLS DEAN,
*Receivers.*

113 A. L. Barber, one of the above-named receivers, being duly sworn, says the above report is true.

A. L. BARBER.

Sworn to before me this 27th day of August, A. D. 1877.
R. J. MEIGS, *Clerk.*

We consent to the sale as here reported.
STANTON AND WORTHINGTON,
*Solicitors for Complainants.*

*Order directing receivers to make private sale of real estate.*

In the supreme court of the District of Columbia.

J. J. ALBRIGHT ET AL.
*vs.*
S. EMERY ET AL. } No. 5697. Equity doc. 17.

This cause coming on to be heard upon the partial report of the
114 receivers made the 27th day of August, 1877, upon consideration thereof, it is, this 27th day of August, A. D. 1877, ordered that the receivers are directed to effect the sale of the real property described in the assignment of E. E. Burrough and Samuel Emery, jr., of the Emery Coal Co., and situated at the NE. corner of A and 7th streets SE., in Washington City, at private sale, for the sum of five hundred dollars over and above all existing encumbrances, upon the best terms possible. The said sum of five hundred dollars to be paid by the purchaser in monthly installments of not less than $50, as stated in said report; the receivers to make no conveyance of the property 'till the whole of the purchase-money shall be paid.

By the court:

A. W.

115 *Motion to fix time for testimony.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL. vs. EMERY ET AL. } In equity. 5697.

The complainants move the court to fix the time for taking testimony in this case, under Rule 65.

STANTON AND WORTHINGTON,
*Sol'c'r's for Complainants.*

To Messrs. ROSS AND DEAN,
*Sol'c'rs for Def'ts:*

Please take notice that on Monday, August 27th, 1877, at the opening of the court, or as soon thereafter as counsel can be heard, we shall call up the above motion.

STANTON AND WORTHINGTON,
*Sol'c'r's for Compl't.*

Service of the above acknowledged.

ROSS AND DEAN,
*For Def'ts.*

AUG. 24, '77.

116 *Order fixing time for taking depositions.*

In the supreme court of the District of Columbia.

J. J. ALBRIGHT ET AL. vs. SAMUEL EMERY ET AL. } 5697. Eq. doc. 17.

Upon motion of the complainants' solicitors, counsel for the defendants being present in court and making no objection, it is, this 27th day of August, 1877, ordered that the complainants be allowed 'till and including the 16th day of September next to take their evidence in this case; that the defendants be allowed from that day to and including the 15th day of October, 1877, to take evidence in reply, and that the complainants be allowed from said last mentioned day to and including the 25th day of October, 1877 to take depositions in rebuttal.

By the court:

A. W.

117 *Order allowing rent to J. Van Riswick.*

In the supreme court of the District of Columbia.

J. J. ALBRIGHT ET AL. vs. SAMUEL EMERY, SR., ET AL. } No. 5697. Eq. doc. 17.

On the petition of John Van Riswick it is by the court, this 4th day of September, 1877, ordered that the receivers heretofore appointed in this

cause pay over to the said John Van Riswick, out of moneys realized from the sale of fixtures, etc., upon the wharf lately occupied by the defendant, the Emery Coal Company, the sum of three hundred and seventy-five dollars as and for the rent of said premises for the quarter of the year ending on the 30th day of June, A. D. 1877.

A. R. OLIN.

118 *Order extending time for taking testimony.*

In the supreme court of the District of Columbia.

LANGDON, ALBRIGHT AND CO.
*vs.*
EMERY ET AL.

On motion of the solicitors for the plaintiffs, and with the assent of the solicitors for the defendants, it is ordered by the court that the time for taking testimony in behalf of the plaintiffs be, and it is hereby, extended for twenty days from and after this date; that the defendants have thirty days thereafter in which to take testimony in their behalf, and the plaintiffs then have 10 days to take testimony in reply.

119 *Order for receivers to pay balance of rent.*

In the supreme court of the District of Columbia.

JOHN J. ALBRIGHT ET AL.
*vs.*
SAMUEL EMERY, SR., ET AL. } No. 5697. Equity doc. 17.

On motion of the counsel for the defendants, and by consent of the counsel for the complainants, it is, this 8th day of November, A. D. 1877, ordered that the receivers in this cause pay to John Van Riswick or his attorney the sum of one hundred and eighty-seven $\frac{50}{100}$ dollars, being the amount of rent due for wharf at the foot of Sixth street, in the city of Washington, D. C., from July 1st, 1877, to August 15th, 1877.

By the court:

A. W.

Consented to:

NATH'L WILSON,
*Sol. for Compl'ts.*

Consented to:

ROSS AND DEAN,
*For Def'ts.*

120 *Petition of receivers for permission to sue.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL.
*vs.*
EMERY ET AL. } No. . Equity.

The petition of A. L. Barber and Mills Dean, receivers in the above-

entitled cause, respectfully shows that there are numerous debts due the Emery Coal Co. which your petitioners believe can be collected by suit, but your petitioners have been unable to collect same by other means.

Your petitioners therefore pray that an order be passed allowing them to institute suits for the recovery of such debts as in their judgment can be collected by suit.

A. L. BARBER,
MILLS DEAN,
*Receivers Emery Coal Company.*

Mills Dean, being sworn, upon his oath says that the facts set forth in the foregoing petition are true.

MILLS DEAN.

Sworn to before me this 18th May, 1878.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY,
*Ass't Clerk.*

121 *Order allowing receivers to sue.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL. *vs.* EMERY ET AL. } No. . Equity.

Upon hearing the petition of A. L. Barber and Mills Dean, receivers, it is, this 18th day of May, 1878, ordered that said receivers be, and they are hereby, authorized to sue such debtors of the Emery Coal Co. as in their judgment is to the best interest of the estate of the said The Emery Coal Co.

By the court:

MACARTHUR, *Justice.*

122 *Petition of assignee of Burrough and Emery, jr.*

In the supreme court of the District of Columbia, the seventeenth day of July, 1878.

ALBRIGHT ET AL. *vs.* EMERY ET AL. } No. 5697. Equity.

To the honorable the justice of the supreme court of the District of Columbia holding a special term:

The petition of Thomas Jesup Miller, assignee in bankruptcy of all the estate and effects of Edward E. Burroughs and Samuel Emery, jr., respectfully shews that heretofore, to wit, on the day of , the said bankrupts conveyed all their property and estate to Mills Dean and John W. Ross for the benefit of their creditors; that thereafter the said assignment and conveyance was set aside by this honorable court, and Mills Dean and

Amzi L. Barber were appointed receivers of all the said property and estate, all which will fully and at large appear reference being had
123 to the proceedings heretofore had in this cause. That the said receivers have the books of account of the said bankrupts, and various other valuable chattels.

That said receivers have deposited in the registry of this court the proceeds of the sales of various property committed to them.

Wherefore this petitioner prays that your honor will order and direct said receivers to turn over to this petitioner all the effects of said bankrupts now in their possession or under their control.

That your honor will order the payment to this petitioner of the amount now in the registry of the court realized from the estate and effects of said bankrupts. And your petitioner will ever pray, &c.

TH. JESUP MILLER,
*Assignee of E. E. Burroughs and Sam'l Emery, jr.*

Subscribed and sworn to before me this 7th day of September, 1878.
R. J. MEIGS, *Clk*,
By R. J. MEIGS, *Ass't.*

It is ordered that the prayer of the above petition be heard the 1st Tuesday of September.

HUMPHREYS, *Justice.*

124 *Petition of assignee of E. E. Burroughs and Sam'l Emery, jr.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL. *vs.* EMERY ET AL. } No. 5697. Equity.

To the honorable the justice of the supreme court of the District of Columbia:

The petition of Thomas Jesup Miller, assignee in bankruptcy of all the estate and effects of Edward E. Burroughs and Samuel Emery, jr., respectfully shews:

That heretofore, to wit, on the day of , the said bankrupts, being then insolvent, conveyed all their property and estate to Mills Dean and John W. Ross for the benefit of their creditors; that thereafter said assignment and conveyance was set aside by this honorable court,
125 and Mills Dean and Amzi L. Barber were appointed receivers of all their property and estate, all which will fully and at large appear from earlier proceedings in the cause.

That said receivers have the books of account of said bankrupts, and various other valuable chattels.

That said receivers have heretofore deposited in the registry of this court the proceeds of the sales of various property and estate committed to them.

Whereupon this petitioner prays that your honor will order and direct said receivers to turn over to this petitioner all the effects of said bankrupts now in their possession or under their control; that your honor

will order the payment to this petitioner of the amount now in the registry of the court realized from the sale of the estate and effects of said bankrupts; and for such other and further relief in the premises as he is entitled to. And your petitioner will ever pray, &c.

THOS. JESUP MILLER,
*Assignee of Edw. E. Burrough and Sam' Emery, jr.*

Subscribed and sworn to before on this 7th day of September, A. D. 1878.

R. J. MEIGS; *Cl'k,*
By R. J. MEIGS, JR., *Ass't.*

126 *Order to deliver to assignee in bankruptcy fund in registry of court.*

In the supreme court of the District of Columbia, the 7th day of September, 1878.

ALBRIGHT ET AL.
*vs.*
EMERY ET AL. } No. 5697. Equity.

Upon the hearing of the petition of the assignee in bankruptcy of Edward E. Burroughs and Samuel Emery, junior, it is this 7th day of September, A. D. 1878, ordered that the receivers heretofore appointed in this cause turn over to the said petitioner all the effects of said bankrupts now in their possession or under their control, and that the amount of money, to wit, the sum of $ , realized from the estate and effects of said bankrupts, be paid to the petitioner, unless cause to the contrary on or before the 14th day of .

By the court:

MACARTHUR, *Justice.*

127 *Answer to rule on receivers.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL.
*vs.*
EMERY ET AL. } In equity. No. 5697.

In reply to the rule issued in the above-entitled cause against the receivers heretofore appointed by this honorable court, the said receivers respectfully say: They respectfully refer to the bill of complaint filed herein and the order of the court appointing them receivers.

After being appointed they gave bonds as required by the court and took possession of the partnership property.

That by leave of the court they have brought a number of suits against the debtors of the Emery Coal Company, and by direction of the court a number of suits have been brought against them as receivers to recover portions of the property which came into their possession as aforesaid, which said suits are not yet decided.

128 That the receivers are faithfully and zealously performing their duties as receivers under the direction of the court. That this honorable court having acquired jurisdiction of the matters described in said bill, there is no authority in law or reason shown by the circumstances of this case for the transfer of the fund which is now subject to the order of this court to the district court, or to pay the same to the assignee in bankruptcy.

That said receivers have expended considerable sums of money in the performance of their duties which has not been reimbursed to them, nor have they received any compensation for their services as receivers.

A. L. BARBER,
*For the Receivers.*

Subscribed and sworn to this 28th day of September, A. D. 1878.
R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't.*

129 *Order overruling motion for payment to assignee in bankruptcy.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL. *vs.* EMERY ET AL. } In equity. No. 5697.

The motion for the payment to the assignees in bankruptcy of the fund in the registry of the court coming on to be heard, it is ordered by the court, in equity sitting, this 28th day of September, 1878, that the same be, and it is hereby, overruled, but without prejudice to the rights of the assignee in bankruptcy.

By the court:

MACARTHUR, *Justice.*

130 *Petition of assignee in bankruptcy.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL. *vs.* EMERY ET AL. } No. 5697. Equity.

To the honorable the justice holding a special term:

The petition of Thomas Jesup Miller, assignee in bankruptcy of Samuel Emery, junior, and Edward E. Burrough, respectfully shews:

That heretofore, to wit, on July 20, 1877, the complainants exhibited their bill in this cause against Edward E. Burrough and Samuel Emery, junior, Samuel Emery, senior, and Charles C. Sailer, charging them all as being parties in the Emery Coal Company and liable for its debts, and against Mills Dean and John W. Ross, as assignees of said company, to set aside the assignment to them of the effects of said company, and for other purposes; that thereafter and heretofore Amzi L. Barber
131 and Mills Dean were appointed receivers of the assets of the Emery

Coal Company, and thereafter and heretofore have paid into the registry of the court the net proceeds of the sale of said assets, and that the sum of $ thereof still remains in its registry; that the said receivers have also the various ledgers and books of account and various other valuables of the said company, and have made no report of any collections therefrom; all which will fully and at large appear reference being had to the records of this court in this cause.

That subsequently, to wit, on April 27th, 1878, the said Edward E. Burrough and Samuel Emery, junior, and as the Emery Coal Company, filed a petition in bankruptcy in this honorable court, sitting as a U. S. district court, and have been duly adjudged bankrupt, and thereafter your petitioner was duly appointed assignee of their estates and effects, and has received due conveyance thereof from the register in bankruptcy, all which will fully and at large appear reference being had to the proceedings in said bankruptcy case No. 327, which is prayed may be taken as part hereof.

132 That the said receivers appointed in this cause have ceased to have any duties to perform except to make their report and obtain their formal discharge.

That this cause ought to proceed to ascertain and settle the liability of said defendants Samuel Emery, senior, and Charles C. Sailer, respectively, for the debts of the said Emery Coal Company. Wherefore your petitioner humbly prays that he may be admitted as a party to this cause for the purpose of this petitioner.

That said receivers be required to report and settle their accounts by an early day, and to turn over to this petitioner such assets of said company as may be in their hands.

That this petitioner may draw the balance now in the registry of this court.

That your petitioner may have leave to come into this cause as a party complainant, and to file a supplemental bill herein; and for such other and further relief as justice may require. And your petitioner will ever pray.

THOS. JESUP MILLER,
*Assignee in Bankruptcy of Edw'd E. Burroughs & Sam'l Emery, jun'r.*

HENRY WISE GARNETT,
*Solicitor for Assignee.*

133 *Report of receivers as to sale of real estate.*

In the supreme court of the District of Columbia.

LANGDON ET AL.
*vs.*
EMERY ET AL. } No. 5697. Equity.

A. L. Barber and Mills Dean, the receivers in the above cause, respectfully report that in obedience to the order of the court passed the 27th day of August, 1877, they have sold to Benjamin Nute and Harriet N. Nute lot No. 17 of Williams' subdivision of part of square No. 898 for the sum of five hundred dollars, and that said Benjamin Nute and Harriet

N. Nute have paid all of such purchase-money, and the said receivers therefore pray leave to make conveyance of said property to said Nute.

A. L. BARBER,
MILLS DEAN,
*Receivers.*

A. L. Barber, one of the above-named receivers, being sworn, says that the facts set forth in the above report are true.

Sworn and subscribed by A. L. Barber this twenty-ninth day of October, A. D. 1878, before me.

WM. P. YOUNG,
*Notary Public.*

134 *Order authorizing receivers to convey.*

In the supreme court of the District of Columbia.

LANGDON ET AL. *vs.* EMERY ET AL. } No. 5697. Eq. doc. 17.

Upon hearing the report of the receivers appointed in this cause of the sale by them under the order passed in this cause the 27th day of August, 1877, of lot No. seventeen of Williams' subdivision of lots five, six, and part of lot four, in square eight hundred and ninety-eight, to Benjamin Nute and Harriet N. Nute, said report this day filed, and it appearing thereby that the purchasers have paid the purchase-money in full and are entitled to a deed thereof, it is by the court ordered, this 29th day of October, 1878, that the said receivers, at the cost of the purchaser, execute a good and sufficient deed of the title and interest of the parties to this suit in and to the said piece or parcel of land.

By the court.

MAC ARTHUR, *Justice.*

135 *Testimony behalf complainant.*

In the supreme court of the District of Columbia.

JOHN J. ALBRIGHT ET AL. *vs.* SAMUEL EMERY, SR., ET AL. } No. 5697. Eq. doc. 17.

DISTRICT OF COLUMBIA,
*County of Washington, ss:*

Be it remembered that at the examination of witnesses began on the 10th day of October, A. D. 1877, and continued from time to time by adjournment, as herein noted, when the within depositions were taken, I, A. Johns, an examiner in chancery, did cause to be personally present at the office of Nathaniel Wilson, esq., in the city of Washington, in said District, the within named witnesses to testify on the part and behalf of complainants in a certain cause now depending in the supreme court

of the District of Columbia, wherein John J. Albright et al. are complainants and Samuel Emery, sr., et al. are defendants.

A. JOHNS,
*Examiner in Chancery.*

OCTOBER 10, 1877.

Met by agreement, the complainants being represented by Nathaniel Wilson, esq., and the defendants by Mills Dean, esq.

SAMUEL EMERY, a witness produced and sworn and examined on the part of the complainants.

Direct examination by Mr. WILSON:

136 1. Q. You are one of the defendants named in this bill, are you not?

A. Well, it seems they have made me one of the defendants.

2. Q. The Samuel Emery, jr., and E. E. Burrough, also named as defendants in said bill, are related to you, are they not?

A. Yes; Samuel Emery, jr., is my son, and E. E. Burrough is my son-in-law.

3. Q. In what way is the defendant Sailer related to you or the other defendants?

A. My son, Samuel Emery, jr., married Sailer's daughter.

4. Q. When and where did you first engage in the business of buying and selling wood and coal in the city of Washington?

A. I commenced, I think it was, in the fall of 1874, at the corner of 1st and B streets, northwest. I afterwards leased the wharf that I now occupy at the foot of 6th street. I leased it at the first of the year 1875; my rent commenced the first of January.

5. Q. In what name was the business conducted, and who was associated with you at the beginning?

A. The business was conducted in my name, and no one was associated with me except my wife. I carried on the business myself.

6. Q. Who were your employees?

Ans. I had Mr. Burrough, my son, Mr. William A. Hodge, Edward E. French, and others.

7. Q. Were your son and Mr. Burrough in your employ at the time you commenced said business; and, if so, how long did they continue in your employ, and for what compensation?

A. Burrough was taken into my employ when I began the wood and coal business, and Samuel Emery, jr., was in my employ before, and had been for some years, when I was in the stone business. They continued in my employ until the first day of April, 1876.

137 8. Q. At what compensation?

A. I couldn't tell without I went back and looked at my books. I think I paid them about $900 a year, but I won't be certain until I go and look at my books.

9. Q. How and when was their compensation fixed, and was it by agreement by way of salary or otherwise?

A. By way of salary. The time was fixed when they commenced?

10. Q. What occurred in relation to their employment on the first of April, 1876?

A. They had previous to the first of April talked with Mr. Sailer, and Mr. Sailer had agreed to join them, and the three of them buy out my interest in the coal and wood business on the first of April, 1876.

11. Q. Where was the business conducted at that time?

A. On the corner of First and B streets, and at the wharf at the foot of Sixth street.

12. Q. The same and the only place where you conducted business in your own name?

A. The same and only place where I had conducted the coal and wood business.

13. Q. Prior to that time what, if any, interest had the said Samuel Emory, jr., or the said Burrough in the business carried on at the places you have named?

A. They had no interest except what I gave them as salary.

14. Q. What, if any, papers were executed on the first day of April, 1876, to effect the change of which you have spoken?

A. We had a settlement, and I sold out to them and took their notes in payment of what I sold to them.

15. Q. What was the evidence of that sale? What, if any, papers were executed in relation thereto?

A. I don't know whether there were any papers executed other than that the sale was on the books, which are in possession of the re-
138 ceivers, I suppose. We made a settlement on my books, squared accounts, and turned the books, accounts, and everything over to the receivers. I sold the wood business to them for a certain specified amount.

16. Q. Was there no bill of sale, assignment, or transfer of any kind executed?

A. No; no assignment other than I published it in the papers. I gave notice that I had sold out to those parties.

17. Q. In what paper or papers was the publication made?

A. The National Republican. They kept the accounts in the name of the firm from the first of April; it was near the last of April when I published it; I think it was the 26th of April that the publication was made.

18. Q. What did you take in exchange for your interest?

A. I took the notes of the Emery Coal Company.

19. Q. How many notes, and for what amounts?

A. I took one payable on demand for $10,000, one at 60 days for $4,000, one at 90 days for $4,000, and another at 4 months for $3,170.85. I think the cents are right.

20. Q. Making in the aggregate how much?

A. $21,170.85.

21. Q. Which of said notes have been paid?

A. The 60-day, 90-day, and 4-months notes are paid, and an endorsement on the demand note for $10,000.

22. Q. An endorsement for how much?

A. An endorsement for something between two and three thousand dollars; less than the three thousand, I guess. I don't recollect just what it is.

23. Q. When were the notes that you have mentioned as having been paid actually paid, and in what way?

A. They were paid by money and by my receiving coal from them and in the way of trade. I gave orders on them for coal to different parties and had it furnished, and I could show the amount of it if I had my books, and how it was.

139 24. Q. When were the 90-day and 120-day notes paid?

A. The settlement was made of those notes to the first day of July, 1877, but I owed them; there was an account running for the past year. They had an account against me on their books, and I had them credited on mine more than enough to make the amount of the two notes, because I gave them a credit on the $10,000 note for the balance.

25. Q. Was any demand ever made by you for the payment of the $10,000 note?

A. There were demands made, but they had not the money to meet it, and I couldn't get it. I wanted it, but they asked me to let it stand.

26. Q. When was demand first made?

A. I can't name the date. I made demands very often for it, but found that I couldn't get it. I made demands for more money than I got.

27. Q. All the notes given, as I understand, on account of the purchase-money have been paid, with the exception of the $10,000 demand note, and on that about $2,000 has been paid?

A. Yes; something over $2,000 endorsed upon it.

28. Q. Do you hold any other paper of the Emery Coal Company, and do you claim that said company is indebted to you in any other way than for the notes given for the purchase of your interest?

A. I hold a note of $4,750, given in lieu of a note that I gave to them at their solicitation. I went and had my note discounted for their use, and I hold another one for $1,500 that I took in the same way—having my notes discounted, and I have paid them since their failure.

29. Q. Give the amounts of those notes.

A. I think one was the 21st of June, 1877; that was a renewal. It was first given in April. I loaned in April one of my notes for $3,500, and one for $3,750, to meet the notes they had due to Messrs. Langdon and Albright—so they represented to me—and they hadn't the

140 money, and I loaned my notes, one for 10 days and the other for 20, I think. When they came due they couldn't meet them. I renewed them—I think one of them twice and perhaps the other once; I can't say now, but at any rate they both fell due the same day, which was the 21st of June, I think, and they hadn't the money to meet them. Mr. Burrough was sick; he was the principal manager of the business, and I went down to his house, saw him, and told him that the notes should have been paid. He said if I would renew them, one for 10-days and the other for 30, I think, he would be sure to pay the 10-day note, and he would give me some collateral—bills and notes—to hold to secure payment of the other if he wasn't able to pay it. He paid the 10-day note. The $7,250 was divided into two notes—one for $4,750 and the other for $2,500—the $2,500 note being for 10 days, and that he paid at maturity. He brought me my note and I gave him one that he had given me in exchange for it. The other he didn't pay, and I paid it on the 24th of July, I think.

30. Q. That was for how much?

A. $4,750, with interest. I paid it at the Metropolitan Bank.

31. Q. What collateral security did you obtain at the time of giving your notes, for what amount, who were the makers, and where are the notes now?

A. I couldn't tell that unless I had a list of them. I have a list of them.

Mr. WILSON. Please present it at the next meeting.

32. Q. You cannot state the aggregate of it now?

A. Something in the neighborhood of $4,000 was what I got to secure the payment of the $4,750 and interest.

33. Q. Are those notes still in your possession?

The WITNESS. The notes that I took as security?

Mr. WILSON. Yes.

A. No; some of them came due, and I have renewed them.

141 There is very little of it paid. I renewed one at 2 o'clock to-day. He (the maker) couldn't pay it, and I renewed it for 90 days. I have renewed a number of them. One or two I got discounted, and I don't know whether they have come due and been paid or not.

34. Q. What transfers or deliveries of personal property—coal or other merchandise—were made to you after the first day of July, 1877?

A. On the 16th of May, I think it was, I bought the little yard there at First and B streets. It was on my ground, and I had rented my yard to them. I had built an office there in the first place for a stone-yard office. Then I started the coal business and used it as a coal-yard office. This last spring I moved my stone-yard over on this lot and necessarily had to use the office, and I told them as I had to use it I thought I had better take that yard back from them, which I did, and allowed them the amount at which they appraised the coal, scales, and everything connected with the yard, and then I hauled coal with my carts from their wharf, which they charged me with, from that time up to the time of their stoppage.

35. Q. What was the latest date on which you received any merchandise from the Emery Coal Company?

A. I can't tell; it was along about the middle of July.

36. Q. Have you any means of ascertaining definitely?

A. Yes; I could tell by my books. I think it was the 14th of July. Sunday was the 15th; that was the first intimation I had that they couldn't meet their payments—that they were going to stop. I kept on hauling coal with my carts on Monday, Tuesday, and I don't know but Wednesday. They had got out of Cumberland coal, and they came to my yard and borrowed ten tons of me and agreed to send me other coal for it, which they did. I think that was on Tuesday, about the 16th of July.

37. Q. Will you please produce a copy of the publication of your sale to the Emery Coal Company in April, 1876.

A. A copy of it is filed with my answer in this case.

142 38. Q. Is it from the newspaper itself?

A. Yes, sir; it is cut from the National Republican of the 26th of April, I think. I notified the public through the paper on probably the 24th, 25th, 26th, and 27th—I think it was about 4 or 5 days in the paper—that I had sold all my interest in the coal and wood business at the corner of 1st and B streets and at the wharf at the foot of 6th street

to C. C. Sailer, E. E. Burrough, and Samuel Emery, jr., and recommended my customers to deal with them. In connection with that notice they put in a notice that they had that day associated themselves to trade under the firm name of the Emery Coal Company, having purchased my interest, and requested the public to favor them, &c. That was in the Republican for 3, 4, or 5 days.

39. Q. Was it in any other paper?

A. In no other paper.

40. Q. Were no writings of any kind executed by you to them?

A. They have a receipt in full from me for all coal, wood, &c., at both of these places at the time I had sold to them. They took a receipt from me for all that, and I received payment by notes, the style of the notes being mentioned on the receipt, one demand note, and the other notes to carry out the amount of $21,170.85.

41. Q. What contribution in cash or stock or in any other valuable thing was made, within your knowledge, by Samuel Emery, jr., and Burrough to the Emery Coal Company?

A. I commenced in October, 1874, I think, and on the first day of April, 1876, I had a strict account taken of the stock, bills receivable, and of all business in connection with the wood and coal. That account amounted to thirty-three thousand and some two or three hundred dollars, I think. I had kept a strict account of all the expenses of that business to me while I carried it on. On my books I gave credit for
143 services rendered to date by E. E. Burrough and Samuel Emery, jr., in excess of what they have now received. I accounted for the $21,000, and took the difference between that and what the stock was assessed at, and gave them credit for that amount on my books, which brought the amount down to what the coal and wood business had cost me up to that day, and that was the capital that they had to start with in the business—ten thousand two hundred and fifty-odd dollars. In other words, I made them a present on that day of that amount, and Mr. Sailer agreed with them to go in and put in $6,000 or $7,000 cash, which he did put in, to my knowledge; at least, I am told that he put in over $6,000 in cash, which made their capital between $16,000 and $17,000. That is what they told me.

42. Q. Did they make any contribution in cash?

A. I don't think they had any cash capital, but they had coal and wood to the value of $10,000 or $11,000, and they had all the profits that I had made in the business, of which I had made them a present on the first day of April, and gave them credit for it on my books in the shape of services rendered.

43. Q. Was that compensation in addition to the salary which they had received?

A. Yes; that had nothing to do with their salary. I paid them their salary, and they both boarded at my house.

44. Q. I understand you, then, that you estimated the value of the stock on hand and the amount?

A. Mr. Hodge and Mr. Samuel Burrough took an account of the stock and that was the result of their account of the stock—everything that they had—which brought it up to thirty-two or thirty-three thousand and some hundred dollars.

45. Q. They made no direct contribution in cash?

A. They made no direct contribution in cash that I know of; I can't say whether they had any cash or not.

46. Q. I ask so far as you know.

144 A. So far as I know I don't know whether they had cash or not, for I can't say what cash they had, other than that which I gave them to start the business. I gave them the profits that I had made in the business and cleared myself from it.

47. Q. And took in return a note for the same amount?

A. No, sir; I took in return a note for $10,250—less than that amount.

48. Q. But you took in return a note for $10,000, and you allowed them for compensation $10,250?

A. No; you mistake.

49. Q. You received as part payment for your interest a demand note for $10,000?

A. Yes.

50. Q. And you allowed them for their compensation up to the first of April, 1876, $10,250?

A. Over and above what I had paid them; yes.

51. Q. And you had paid them, you say, at the rate of $900 a year?

A. Yes, sir.

52. Q. How was the compensation determined which you allowed to them?

The WITNESS. How do you mean; while they were engaged by me?

Mr. WILSON. Yes.

A. It was determined by my will and their acquiescence.

53. Q. And how was the compensation that you allowed to them in this settlement on the 1st of April arrived at?

A. By Mr. Hodge and Samuel Burrough taking an account of the stock that I owned on that date.

54. Q. What did that amount to?

A. Thirty-three thousand and some hundred dollars.

55. Q. I ask you how you came to allow them $10,000 profit?

A. Because I had a mind to; I chose to.

56. Q. How did you fix upon that sum?

145 A. Because it was over and above the amount that the coal business had cost me up to that time.

57. Q. How did you arrive at that?

A. I have common sense, and commen sense enough to keep my books and know what an article costs me when I buy it.

58. Q. Your idea was that the $10,000 was already realized?

A. It was what was over and above the cost of the business up to that date. I made a present to them on that date of the $10,250.

59. Q. Have you any idea now what the cost was up to that time?

A. I can't tell now; I can tell by the account upon my books; I know I kept an account of all that I had paid out and all that I had received from my coal business until that date, and this amount was over and above what I had paid out.

60. Q. What outstanding accounts and uncollected debts were included in that estimate of $33,000?

A. I am sure I can't tell; my books were turned over to the receivers of the Emery Coal Co.

61. Q. Can you state the aggregate?

A. No; I cannot; I cannot state anything about it now.

62. Q. Can you state approximately what the stock and fixtures were estimated to be worth?

A. No; I can't tell anything about it. I employed Mr. Hodge and he (E. E. Burrough) employed Samuel Burrough to take an account of the stock and measure all the coal and value all that there was in connection with the business, and that was the result of the account that they took.

63. Q. Can you state now approximately of what the assets consisted that were turned over?

146 A. They consisted of coal and wood, bills receivable, horses and carts, and fixtures generally in connection with the coal-yard.

64. Q. Can you state approximately how much coal was on hand, what the fixtures were worth, what the stock consisted of, and also approximately what the aggregate was of the accounts then outstanding that were turned over to the new firm?

A. I can't say. The aggregate of the amount over and above what the thing had cost me was ten thousand two hundred and fifty-odd dollars, but what proportion of it was coal, and what other things, I can't say.

65. Q. Was any statement made in detail showing what the stock on hand was, or what was its value?

A. There was a statement made and exhibited to me, and I acquiesced in it by that settlement.

66. Q. Have you a copy of it?

A. No; I have no copy of it, and never had a copy of it. I settled and took their notes, and I supposed that was the end of that. I sold all my interest to them.

67. Q. You have no recollection whatever as to the amount of coal then on hand?

A. No, sir; I have not.

68. Q. You have no recollection whatever of what was due you on account of outstanding debts?

A. No; I do not recollect. It is all accounted for in the exhibit that was made at the time, but I have no recollection of it, and didn't keep any copy of it. I was satisfied with it as it was.

69. Q. What other business were you engaged in?

A. I was engaged in cutting stone.

70. Q. Under whose personal direction was the business at the coal-yards prior to April 1st, 1876?

A. It was under my direction; by those in my employ.

71. Q. What personal attention did you give the same?

A. I gave it time enough to meet all the notes that I had given to pay for what I bought, and I do not know how much more time I gave it.

147 72. Q. You were the paymaster?

A. Yes, sir; I was the paymaster, and all there was connected with the business.

By Mr. DEAN:

73. Q. Did you not give it general attention?

A. Certainly I did. I gave it just as much attention as I did any other business in my office. Mr. Burrough managed my business for me. I engaged him for that purpose, and he did it all under my superintendence. I told him what to do, and what not to do. He did what I directed him to do, and he did not do that which I declined having done. If he did anything that I thought was wrong, I told him of it, and countermanded it if it was possible.

By Mr. WILSON:

74. Q. Were there two offices?

A. Yes, sir; I had two.

75. Q. In whose immediate charge were those two offices?

A. I had Mr. William E. Hodge in one. He is now my book-keeper. I had E. E. French as another one, to weigh coal there, &c.; and I had a young man by the name of Harry something—I cannot think of his name now. At different times I had a number there who had immediate charge for me.

76. Q. The business, however, was under the immediate direction of Mr. Burroughs, I understand you?

A. Mr. Burrough I employed to manage that business for me—to carry it on for me.

77. Q. What was the particular employment or duty of Samuel Emery, jr?

A. They both acted as kind of managers, and to sell coal and to do general business for me—to work for my interest as far as they could, as any employee would work to the interest of his employer.

78. Q. Can you state approximately the amount of money in cash invested by you in the business up to the first of April, 1876?

148 A. I never had much cash.

79. Q. If you bought coal the coal was turned into cash, I suppose?

A. I paid Messrs. Langdon & Albright between $70,000 and $80,000 for coal during that time. I gave them my notes, and met the notes at maturity. I bought coal of other parties also, but I cannot say how much.

80. Q. I wanted to get at the whole amount approximately that you put into the business in cash.

A. I cannot tell without referring to my books to find out.

81. Q. You cannot state them?

A. No, not without my books. I believe I did a business probably of $100,000 or $150,000 while I was in the business, which continued from some time in October, 1874, until the first of April, 1876.

82. Q. When did you first buy coal of Langdon & Albright?

A. I do not recollect.

83. Q. Was it soon after you commenced business?

A. I do not know whether I bought them in the fall that I commenced or not. I guess I bought of them the first I bought of anybody.

84. Q. From whom were your purchases chiefly made?

A. The largest portion I bought from Messrs. Langdon & Albright.

85. Q. What proportion of your purchases of coal were made from them?

A. I cannot say; I bought the largest proportion from them. They gave the best terms that I could get then, and I accepted them. I bought considerable Cumberland coal at the same time of other parties. I bought some of Borda & Kellar.

86. Q. What contribution was made by Mr. Sailer, to your knowledge, on and after the first of April, 1876?

149 A. I have no personal knowledge in regard to it. I understood from Mr. Sailer and Mr. Burrough both that Mr. Sailer put something over $6,000 in cash into the business.

87. Q. What, if any, paper was made or endorsed by you for or on behalf of the Emery Coal Company, or any of the defendants named in this case, after the first day of April, 1876?

A. I loaned them my paper on two or three occasions.

88. Q. State the precise occasions and amounts.

A. I cannot tell, and I do not know that I could find out. I loaned them my paper a number of times. For instance, one of them would come to me and say, "Let me have your check, for I have got a note to meet, and I will pay it in three or four days." I recollect once, about a year ago I suppose, they had a note fall due to Messrs. Langdon and Albright, and they wanted $4,000 to meet the note, and I gave my check for that amount, and on the second day afterwards it was paid, and I put it back in my account in the bank again.

89. Q. Do you keep a record or stub-book showing all the paper of which you were the maker or endorser?

A. No; I do not keep any such record.

90. Q. Will you, between this and the next meeting, examine your check-book, or the stubs of your checks, and ascertain on what dates and for what amounts any checks were given by you for or on account of the Emery Coal Company, or for or on account of either of the defendants named in this case?

A. I do not keep any account of any transactions of the kind.

By Mr. DEAN:

91. Q. Did you ever give any checks to pay debts of the Emery Coal Company?

A. I never gave any checks whatever to pay debts of the Emery Coal Company. I have loaned them my checks, but I never gave any checks other than for the time being.

150 By Mr. WILSON:

92. Q. Was that the only occasion on which you loaned them your check?

A. I cannot say.

93. Q. According to the best of your recollection, is it the only occasion that you loaned them your check?

A. I cannot say whether I loaned my check; I have loaned my notes. They would come and want to borrow my note for ten days, and I have loaned it, and they had it put to their account, and at the end of ten days they would pay it.

94. Q. Have you any means of stating what notes you loaned to them, or how often, or in what amounts you loaned them your name on paper?

A. No; I have no means of stating how often or how many times I loaned them my notes or checks. I have done it for them the same as for other individuals at the same time, and I have asked the same favor from my friends in the mean time. It was an ordinary transaction in business.

95. Q. In whose favor were the checks drawn by you?

A. They were drawn in favor of the Emery Coal Company.

96. Q. Then would not your check-book show what checks were drawn by you in favor of the Emery Coal Company?

A. I am not as particular about keeping a check-book as a good many. I am out of my office a good deal more than I am in it, and I do not keep my stub-book along with me. I just take some checks in my pocket and take them to the bank and use them until they are gone, and then use others.

97. Q. Where was your account kept?

A. At the Bank of the Republic, and has been ever since I have been in town.

151 98. Q. Will you please find and produce here at the next meeting your stub-book for checks paid by you since the first of April, 1876?

(By advice of his counsel, witness says that he should decline to produce any such book if he had it, but says he has no such book.)

99. Q. When were the checks returned, or what disposition was made of them?

A. They were returned on the settlement of my books. Perhaps I can find the checks from the settlement of my books.

100. Q. Will you please examine your returned checks and your bank-book, and produce here the checks given by you in favor of the Emery Coal Co., or in favor of Burrough or Sailer or Samuel Emery, jr., since the first day of April, 1876, and any other checks which were given by you for the use or benefit, directly or indirectly, of the Emery Coal Co., or any one of the defendants?

A. Yes, sir; I will do so.

101. Q. What, if any, memorandum do you keep of notes made or endorsed by you?

A. I do not keep any memorandum of them. When they are legitimate notes of mine I keep an account, and know when they are due, but if you were to ask me to loan you my note for ten days I would take your note for the same amount for the same time in return, and when you brought back my note I would return yours.

102. Q. Between this and the next meeting please examine your books, and be prepared to state as fully as possible when and for what 'mounts any notes were given by you for the defendants, or in respect of the business of the Emery Coal Co., or any of the defendants.

A. I have not given a note or a check, except as a temporary loan, to the Emery Coal Co. since they have been in business. I have given checks as temporary loans.

152 103. Q. Please comply with the requirements of the foregoing question with respect to any loans made by you to them within the time mentioned.

A. I will examine and find out as far I can.

Adjourned to 3 o'clock p. m. October 11th, 1877.

OCTOBER 11, 1877.

Samuel Emery's direct examination continued.

Witness produces two of the checks asked for by interrogatory 102, and says:

I have looked through all my old returned checks as far as I could, and these are all that I was able to find.

Interrogatory 100, asked of the witness yesterday, was here read to him, and he answers further:

I am very sure that I never gave Sailer a check in my life. I am pretty sure that while the Emery Coal Co. was in existence I never gave to E. E. Burrough or Samuel Emery, jr., a check in their personal capacity. I gave to the E. C. Co. the following checks:

| | |
|---|---|
| August 9, 1876 | $150 |
| " 28, 1876 | 500 |
| September 15, 1876 | 600 |
| November 13, 1876 | 4,000 |

I think those four are all the checks I have ever given them.

By Mr. WILSON:

104. Q. Have you examined your bank-books and checks since the 1st of April, 1876, for the purpose of ascertaining what checks have been given by you to the Emery Coal Company?

A. I have.

105. Q. And you say that you have given no other checks or made no checks for their benefit, directly or indirectly, other than those named by you?

153 A. As far as I have examined that is all. (Witness refers to another bank-book.) In addition to those four I find by this book that I gave one on the 18th of June, 1877, for $400. I thought the other book, from which I obtained the other checks, contained all their business, but I find this check mentioned in this book; but it is the only one that I see in this book?

106. Q. To what book are you now referring?

A. I refer to my bank-book with the Bank of the Republic, beginning April 2, 1877. I examined up to the 20th of July. When that $400 check was given he asked me if I wouldn't exchange checks with him, and I did so; and it is the same way with all those checks.

107. Q. Do I understand you to say, then, that the five checks you have mentioned are the only ones made by you in favor of the Emery Coal Company after the 1st of June, 1876?

A. To the best of my knowledge those are the only ones that I have given to the Emery Coal Company while they were in existence.

108. Q. What, if any other, loans were made by you to them, directly or indirectly during that time?

A. I loaned my notes, as I stated to you yesterday.

109. Q. I mean in addition to the notes.

A. No other loans in addition to those checks and the notes, as I stated yesterday.

110. Q. Please state definitely what notes were loaned by you to them.

A. I cannot state, as I told you yesterday; I made no account of them. They would come to me and say, for instance, "I have got to pay a note to-day, but I am short; can you let me have your note in exchange for mine for ten, fifteen, or twenty days." I would take their note and give them my note, drawn to their order of the same date and for the same amount, and when the note became due they would bring it back
154 to me, and I would tear my note up and give them the note I had, and I suppose they did the same. It was but an exchange of notes for the time being for accommodation.

111. Q. Have you any idea of the aggregate amount of the notes so loaned by you to the Emery Coal Company?

A. They were very few. I don't know that I gave any until the notes that I gave in April, when I gave two notes, one for $3,500, which I loaned them and took their notes in exchange for the same amount and the same time, and another note for $3,750, about three days apart. Mr. Burrough came and said that they had to meet some of Langdon & Albright's notes that were coming due in three days; that they had the money coming due from the Departments or some place, but they could not get it at the time, and he asked for my notes, one at ten days and the other at thirty days. When those notes came due they couldn't pay them and I renewed them, and they both came due, as I stated yesterday, on the 21st of June. At that time Mr. Burrough was sick and unable to go out of the house. He sent for me and asked me to come down; I went down and he told me how it was. I told him that I wanted the notes paid; that I didn't want them to stand; that I loaned them in exchange and wanted them to be paid. He told me that they had some three or four thousand dollars coming to them from the House of Representatives, with which he had calculated to meet those notes, but he couldn't get it now. He drew up some other notes, and I drew up two notes for the same amount and on the same date, and at his request I went to the man at the Metropolitan Bank and asked him to renew those notes by exchange and give me the ones due, which he did, and I returned the ones that were due to Mr. Burrough. I held his notes at the same time, and one of those notes was for ten days and the other for thirty days. The ten-day note he paid, and he said if he didn't pay the other he would give me his claim on the House
155 of Representatives as security. A few days afterwards, when he got out, he said that he couldn't spare that claim; that he must have the money to meet other demands, but that he would give me as security on the 1st of the month some notes that he should take from the dealers that he was dealing with, and with whom he had settled, for the payment of this thirty-day note for $4,750, which was not paid. On the 24th of July, after they stopped business, I went and paid that note. I still hold the one that he gave me at the time I mentioned.

112. Q. Then prior to the 1st of April, 1877, you had not loaned them your note?

A. I say I don't know of any note that I loaned them prior to that time. I might have, but I kept no account of it. I can't think of any particular notes that I loaned them now. I might have loaned my note to them for ten days, and I might not; I don't know. I should have done it as their credit then stood; I supposed they were good, and I would have had no hesitancy in loaning them money any more than to any other

individual friend of mine in business. I received no benefit from any notes or checks that I loaned them during their business time, in any shape or form.

113. Q. Who was in the habit of paying the rent for the wharf?

A. The Emery Coal Compay.

114. Q. Invariably?

A. Invariably; I never paid it, and never had a demand made for it until after the Emery Coal Company failed, and then Mr. Van Riswick sent me a bill, which I passed over to the receivers.

115. Q. Did you ever give Mr. Van Riswick your check for rent after the 1st of April, 1876?

A. No, sir; I hav'n't paid Mr. Van Riswick any money since April 1st, 1876, unless I paid him his last quarter a few days after it
156 was due, which was on that date. (Witness refers to a bank-book.) I can't say whether I paid him by money or by check. If I paid him, presume I paid him the money; I don't see any check here. I paid that last quarter's rent to Mr. Van Riswick, I think, in stone work on Fifth street, at his son-in-law's office. I think I had an account with him that just about balanced the rent.

116. Q. Did you keep an account on your own books with the Emery Coal Company?

A. Yes, sir.

117. Q. Will you please prepare and hand in a copy of that account?

A. I kept a kind of an account which I could understand, but I doubt whether you could. I am not very much of a book-keeper.

117. Q. It was the same kind of an account you keep with everybody?

A. Yes, sir; I know all that is due to me.

118. Q. Do you keep a day-book or a ledger?

A. I keep an order-book and ledger, and transfer directly from my order-book to the ledger. I kept a ledger account with them, and I put down on the ledger everything that I had with the Emery Coal Company. I can bring the book up here if you want to see it.

119. Q. What became of the two notes for $3,500 and $3,750?

A. I renewed them. I gave them back to him and I renewed them for him—one for $4,750 and the other for $2,500—which made the aggregate amount. The one for $2,500 was for ten days, and that came due on the 21st of June. I renewed that one for ten days and the other, for $3,750, for thirty days. The $2,500 note was paid at maturity by the Emery Coal Company, and they brought it to me, I think. At any rate I gave them up the note of the Emery Coal Co. which they gave me in lieu of the note of mine for the same amount, which they paid. I can't
157 recollect whether they brought it to me or not, now. At any rate they satisfied me that it was paid, and I returned a note that I had held for it. The $4,750 note I went and paid at the Metropolitan Bank on the 24th of July; I think it was $4,785, interest and all, that I paid. I still hold in my possession the note that they gave me for that.

120. Q. What is that for?

A. $4,750 at eight per cent. interest. It is exactly like the note that I gave him.

121. Q. And as security for the payment of that note what do you hold?

A. For the $4,750 note that I paid on the 24th of July I hold as security the following notes:

| | | |
|---|---|---|
| R. McDonald, | July 2, at 30 days..... | $298 38 |
| " " | " 2, " 60 " ..... | 298 38 |
| Joseph B. Glotzback, | " 2, " 60 " ..... | 231 50 |
| Thwing & Hitchcock, | " 2, 1877, at 3 months..... | 121 50 |
| R. Collins, | " 5, 1877, at 60 days..... | 501 00 |
| ($100 of that note was paid.) | | |
| R. Andrews, July 9, 1877, at 90 days..... | | 361 40 |
| (That I renewed yesterday.) | | |
| J. H. Baum, July 10, at 2 months..... | | 180 97 |
| Washington Brick Company, July 10, 1877, at 3 months..... | | 1,318 57 |
| Mineral Springs Co. (overdue, and it isn't worth a sixpence).. | | 750 00 |
| Aggregate..... ..... | | $4,061 76 |

I have received about $630 on those notes. The last note I mentioned I don't suppose is worth anything, and I don't know whether I will get anything on the others. I got $10 on account of the Glotzback note for $231.50, and he didn't seem to care whether it was paid or not. I don't think he has anything by which I could compel him to pay it. The others are about as much interested in the payment of the notes as he is.

158 122. Q. What is the date of the note for $4,750, which you now hold?

A. June 21, 1877. I had it in my possession, and a copy of it is as follows:

$4,750.] WASHINGTON, *June* 21, 1877.

Thirty days after date we promise to pay to the order of Samuel Emery four thousand seven hundred and fifty dollars, at the National Metropolitan Bank, with interest at eight per cent. until paid. Value received.

(Sig'd) THE EMERY COAL COMPANY,
By E. E. BURROUGH.

123. Q. As I understand, then, that is the only note you now hold against the Emery Coal Company except the note for $10,000, on which there has been a partial payment?

A. No; I still hold another note on the Emery Coal Company, for which I loaned them one on the same day, which is dated on the 22d of June, 1877, drawn at sixty days, for $1,500. The day after I went down and saw Mr. Burrough and renewed this note he sent up that note and one drawn for me to sign for him, saying that he was sick and not able to get out of the house; that there were some vessels discharged at the wharf, and he was owing the freight for the coal, and he wanted the money to pay the freight, and would I sign that note and let them get the proceeds of it to pay the freight that he was owing on the wharf. I signed the note and took this one that he sent in the place of that. A copy of that note of the Emery Coal Company is as follows:

$1,500.] WASHINGTON, D. C., *June* 22, 1877.

Sixty days after date we promise to pay to the order of Samuel Emery

fifteen hundred dollars, value received, with interest at eight per cent. per annum until paid, payable at the Second National Bank, Washington, D. C.

THE EMERY COAL COMPANY,
By E. E. BURROUGH.

159 124. Q. Has the note which you gave to the Emery Coal Company been paid?

A. That note is dated on the 22d of June, and is drawn at thirty days. I paid it thirty-three days after the date of it at the Second National Bank, and I have the note at my office.

125. Q. And those are the only ones that you hold?

A. The only notes except the $10,000 note.

126. Q. When and from whom did you receive the notes named in the schedule as collateral security for or to protect the note for $4,750?

A. I cannot state the date I received them. I received them from a colored man, who said that he found them out on the hill between the navy-yard and the brick company's works. Mr. Burrough came around to my house and said that he had those notes ready to bring up to me and went out to the brick company's place, and coming back he lost them, with a red pocket-book, in which they were contained. He advertised the pocket-book, and directed in the advertisement that any one who found it should receive a reward of $10 by leaving it at my house. He said the notes were intended for me, and he wanted me to have them. The next morning but one this colored man brought the pocket-book around to my house, rolled up in a paper, and I gave him the $10, and when Mr. Burrough saw me that day, he returned me the $10 that I had paid. In the mean time, however, for fear that he would not find this pocket-book, Mr. Burrough went around to the parties who had made the notes and got other notes, and gave them a receipt cutting off payment of the original notes, and some of those duplicates I got. I don't know which notes were in the pocket-book now and which were not. The brick company's note was in the pocket-book.

127. Q. When was the advertisement of the loss?

A. I think it was about the night of the tenth of last July that
160 it was advertised in the Star, and that is the first I knew of it. Mr. Burrough came to me the next morning and said that he had got the notes ready to bring up to me, according to agreement, when he lost his pocket-book. After the pocket-book was given to me I returned it to Mr. Burrough with its contents. In the mean time, while it was lost, he had got some duplicate notes from the makers, and passed them over to me. Those for which he had not got duplicates he took out of the pocket-book and gave me the number that he intended. He had a list of what he was going to give me. He took the pocket-book, and I don't know what he did with it. I suppose he has it yet. That is the way I received them. I should have received them on the 10th July had he not lost them.

128. Q. Who was the negro from whom you received them?

A. I don't know. I asked him where he found the pocket-book. Mr. Burrough said that he went down to his house, took his wife in a buggy, and drove over to the brick company's place, and as he was coming back

it was about dark. He had a small buggy, and carried his pocket-book in the back pocket of his pantaloons, he said, and I suppose in setting over close to one side, so as to give his wife room, he crowded up the pocket-book on that side and it dropped out.

129. Q. Were there any other notes in that pocket-book when you received it?

A. There were other papers. I didn't examine them. I don't know that I examined the book at all. I think the pocket-book was brought to my house while I was eating breakfast. I asked the boy where he found it and he told me. I gave him $10 and he left, and I think before I had done breakfast Mr. Burrough came in, and I handed the book to him. I don't know that I opened the book. It was rolled up in a newspaper. I don't think I opened it until he came into the house to know if I had heard anything of the book.

161 130. Q. When he opened it did he give you the notes?

A. He gave me part of the notes. He had duplicates of some of the notes that were in the pocket-book, which he had obtained from the parties after he had lost the pocket-book, and he opened the pocket-book and took out such notes as he had not previously given me duplicates of. The brick company's note was one, and he gave me those that he had not given me duplicates of.

131. Q. Were they endorsed then and there?

A. They were all endorsed when they were in the pocket-book; every one of them. He had them all put together in his pocket-book ready to bring them up to me on Saturday night, and he lost them on Saturday night.

132. Q. Did you have any previous conversation with him about those notes?

The WITNESS. What; previous to the loss?

Mr. WILSON. Yes.

A. I had a conversation when I took that note. He agreed to give them to me as soon as the first of the month came around. I had spoken two or three times after the first of July and told him I wanted them, and he told me that he would get them as soon as he could get his accounts made up and give them to me.

133. Q. What was the agreement? How were the notes described, and was there any list made of them?

A. There was no list made. When I renewed the note for him I told him I wanted him to give me some security for the note, as long as he could not pay it. In the first place, he said he would give me a claim on the House of Representatives for $4,000, I think. That is what he offered first. Then I agreed to take up with that. The next day, or next day but one, he said he would have to use that claim to meet other payments, and if I would let it lie until the 1st of July he would settle every month with those parties that he dealt with, and would get notes from them which he would endorse over to me to hold as security for the payment of the $4,750 note.

162 134. Q. He didn't give you enough to pay it?

A. No; he didn't give me enough, and some of those that he did give me are not good for anything.

135. Q. When you gave those notes, in June, 1877, what knowledge had you of the condition of the affairs of the Emery Coal Company?

A. I believed that they were in good circumstances. I believed that they were making money. I hadn't an idea, until the middle of July, that they were in any other condition but a good condition of business. I hadn't the least idea but what they were doing a good business.

136. Q. Had you made any examination of their books?

A. No, sir. I didn't claim that I had any right to do anything of that kind. I was not connected with the firm in any way, and I claimed no such right.

137. Q. Upon what was your opinion as to their condition based, then?

A. Their credit was good.

138. Q. Had you no other knowledge?

A. I had no knowledge of their business; probably not half as much as Messrs. Langdon and Albright had. I don't suppose I knew half as much about their business as Langdon and Albright did.

139. Q. Did you take or do you hold any security for the payment of the ten-thousand-dollar note?

A. No, sir; not the least; only I am in hopes to get some of the proceeds of their sales if there is any left after the court charges are paid.

140. Q. Was there a list made at any time of the securities that you were to have prior to their delivery to you?

A. No list. He told me that he would get notes, and mentioned some. The brick company's note was one and Collins' was another. He said he would get the notes and turn them over to me to hold as security for this note. He mentioned over different names.

163 141. Q. When were those names mentioned?

A. When I renewed this note; on the 21st of June.

142. Q. And nothing more was done in regard to obtaining it until after the first of July?

A. After he declined giving me what he first offered me, and after he said that he had to use that four-thousand-dollar voucher from the House of Representatives, then he *that* said he would give me this instead of that. That was previous to the first of July. Then, of course, I waited until he made his payments. After the first of July I spoke to him perhaps once or twice about it, to tell him that I wanted him to give me those securities according to agreement.

143. Q. And, as nearly as you can recollect, it was on what day of the week or what day of the month that you received them?

A. He lost them on Saturday night, I think, and they were brought there either Monday or Tuesday morning, I think, but I can't say the date. It was the second day after they were advertised as lost. They were endorsed, and Mr. Burrough told me when he came that he had lost them.

144. Q. You say that in June, when you gave this note, you had no personal knowledge of the condition of the Emery Coal Company but that they were in good credit?

A. I believed that they were in as good credit as I was myself. At the same time I held a claim against them for ten thousand dollars, which I thought was as much as I ought to hold without security—as much as I would want to hold against most any party.

145. Q. When did you first receive information that their condition was not so good as you had supposed?

A. The first knowledge I had of their condition was on Sunday morning, the 15th of July. I was at home and had the rheumatism, so that I could not well go out, and didn't go to meeting as usual. Mr. Burrough came to my house and told me that he was afraid that they would have to stop business; that he was having a list made out and was going over his books and making a list of debts and assets, and he was going to see his attorneys next morning and get their advice as to what he had best do. That was the first idea I had that they would be compelled to stop business.

164

146. Q. That was on Sunday, the 15th of July?

A. Yes; on Sunday, the 15th of July, 1877.

147. Q. Did he give you any statement of his affairs?

A. No.

148. Q. Did you ask for any statement?

A. No; I didn't. I don't profess to be much of a mathematician; I can cut stone and work better than I can figure, but if I had taken his statement I should not have known much about it.

149. Q. But I mean generally as to his condition?

A. No, I didn't. He told me that the reason that he would have to stop was that he had a note that was due next day, I think, or in a day or two after that, to Messrs. Langdon and Albright, which he was not able to meet and he believed that he should have to stop business.

150. Q. Did you say anything to him about your debt then, or did he say anything to you?

WITNESS. The debt that I had this security for?

Mr. WILSON. Yes.

A. No.

151. Q. About the other debt?

A. About the ten-thousand-dollar debt; he offered to give a bill of sale of his fixtures down there, but I told him I didn't want it; that I was perfectly willing to take my chances with the rest for the actual debt that he owed me. This accommodation paper was a different matter entirely.

152. Q. With reference to the 15th of July, what day was it that you received the pocket-book from the colored man?

165

A. I say I guess it was about the Monday or Tuesday of the previous week; I won't be certain; it was some time in the previous week. You can get a copy of the Star and see. It was the day after the advertisement in the Star that the pocket-book was brought to me, unless, as I say, Sunday intervened. If Sunday intervened and the advertisement was Saturday night it was Monday morning; but if the advertisement was Monday night it was the next morning.

153. Q. The note of the Washington Brick Company bears date the tenth of July, does it not?

A. Yes.

154. Q. The 10th day of July was Tuesday; it was then lost on the night of the 12th?

A. I think so. It was Thursday that I received it.

155. Q. You say that it was the day after it had been advertised?

A. It was brought to my place the second day after it was advertised. He said that as soon as he found it was gone he drove back almost to the brick company's yard and looked for it but could not find it, and then drove up to the Star office and advertised it the same evening.

156. Q. Then if it was advertised on the 10th you received it on the 12th?

A. Yes.

157. Q. And if it was advertised on the 12th you received it on the 13th?

A. Yes; that is the way of it.

158. Q. But it was on the following Sunday morning, the 15th, that Mr. Burrough came to your house?

A. Yes; Sunday morning.

159. Q. And he then offered to give you a bill of sale for the fixtures and stock?

A. He said he would give me security, and could give me a bill
166 of sale. He spoke something about it; he didn't say he would do it or wouldn't do it, but he said something about a bill of sale.

160. Q. You said you declined to take it?

A. I didn't want it. I wouldn't take it from anybody under circumstances of that kind—for an actual debt that was due me.

161. Q. Had Mr. Burrough before that Sunday morning at any time made any statement of his affairs to you?

A. No, sir.

162. Q. Had you had any settlement with him prior to that time?

A. Yes, sir.

163. Q. When?

A. I had a settlement with him the week previous.

164. Q. What was the nature of it?

A. We squared up our accounts. They had an account against me on their books for ten or eleven thousand dollars for money and orders that I had given on them, and for different business transactions. I had given orders for coal and I had received coal myself, and they had passed over bills to me of different parties to collect which they had charged to me as cash in payment of these notes. I kept dunning them for these notes, which they didn't pay as they became due.

165. Q. (By Mr. DEAN.) By "these notes" you mean the purchase-money notes?

A. Yes. I was in want of money, and I got all I could.

166. Q. (By Mr. WILSON.) What was the date of that settlement?

A. I don't know. I cannot say.

167. Q. State approximately, then.

A. Some time previous to the 15th of July.

168. Q. Was it the week previous?

A. I cannot say; I don't know; I could tell if I could see the receipts.

169. Q. Where are they?

167 A. I have got their receipts, and I endorsed the notes and turned them over in payment.

170. Q. Was there any formal statement made of the account between you?

A. Yes; there was a statement of the account.

171. Q. Will you please produce the account and the receipt, with a copy of your account with the Emery Coal Company?

A. Yes, sir; I will do so.

172. Q. Who owned the coal-yard at the corner of 1st and B streets?

A. I owned it.

173. Q. And still own it?

A. And still own it. I don't know whether I should or not if my debts were all paid.

174. Q. The title is in your name?

A. The title is in my name.

175. Q. Rental was paid regularly to you by the Emery Coal Company for the wharf?

A. I charged it to them on my books. It was entered in that account that was settled—the rental from the 1st of April, 1876, until I bought the yard back again, with all their fixtures and all the stock there was in it on the 16th of May, I think it was.

176. Q. Was your name on the building in any place?

A. It was when I sold out to them.

177. Q. Was it prior to that time?

A. I had my name there when I was in business there myself.

178. Q. Whereabouts?

A. On the building. It was on the wall and on the sign both, I guess. I cannot say now where it is. My name is there now.

180. Q. What is it?

A. Samuel Emery.

181. Q. Was it there as a sign, or how?

168 A. It was put there by me as a sign. I paid for putting it there. I don't know whether it is on the side of the house or not. I know "coal and wood" was on the house, but whether my name is on the side of the house I can't say; but it is on the sign.

182. Q. And has remained there since the time you sold it.

A. I sold the stock, signs, fixtures, and everything to the Emery Coal Company, and they had the authority to keep it there or not, as they pleased.

183. Q. When did the payment of rent cease?

A. It ceased at the time that I bought the fixtures and yard back again.

184. Q. What date was that?

A. I think it was the 16th of May, 1877. I had notified them some three months previous to that that I must have the office at that time. I had moved my stone-yard on that lot. I had forty thousand feet of ground there in one lot that I purchased for a stone-yard, and I built the office for a stone-yard office, and then I fixed the coal-yard up and started that business in connection with the stone-yard.

185. Q. Then, on the 16th of May you took possession of the yard?

A. I purchased it from them and gave them for the fixtures and the little coal that was there—only about forty tons, I think, at that time—twelve hundred and some odd dollars, I think, that they charged me with. I have the bill for the fixtures of the yard. I charged them with rent up to that date.

186. Q. Did they continue to occupy it after that time?

A. No, sir; not after the 16th of May.

187. Q. The Emery Coal Company moved away?

A. I took possession of it that day. I placed my clerk there on that day and took possession of it.

188. Q. Did the Emery Coal Company continue to occupy it with their books or otherwise?

169 A. No; they left a small cash-book there and requested my clerk that if any one called there to pay those little dollar and dollar-and-a-half bills that he should receive the money and pass it over to them. He did receive the money and gave credit to the Emery Coal Company for it on my books.

189. Q. They moved their other books away?

A. They were all moved away. The book they left there was just a little day cash-book that they had to put down little sales of 5, 10, and 20 cents upon for a half bushel of coal, &c.

190. Q. Did the Emery Coal Company have a sign on that building?

A. I don't know. I never noticed whether they did or not.

191. Q. Have they one on the building now?

A. No; there is none on it now. I don't know whether they had a sign and took it away or not. I have seen some of the Emery Coal Company's books and bill-heads there. The bill-heads were changed when I sold out to them. My own bill-heads were thrown aside and new ones printed and a new set of books prepared.

192. Q. Will you be good enough to look on your bank-book and see if you can find a check there of the date of 8th of Feb., 1877, to John Van Riswick for $375?

A. No, sir; no check was given by me on that date.

193. Q. Did you give a check on that date for $175?

A. I gave J. E. Zug on that date a check for $400.

194. Q. Will you see if at any time in Feb. you gave to John Van Riswick a check for $175?

A. No, sir; nothing of the kind in Feb. I only gave five checks in Feb., 1877, and neither of them was to John Van Riswick.

195. Q. Is that the only bank account you kept?

A. That is the only bank account I ever kept in town until re-
170 cently. I have a bank account now with the Second National Bank. I have not given John Van Riswick any money nor check since I settled with him for the quarter's rent due on the 1st of April, 1876. He notified me after they failed that he should hold me for the rent.

Adjourned to 2 o'clock p. m. to-morrow, Oct. 12th, 1877.

OCTOBER 12, 1877.

Continuation of the direct testimony of Samuel Emery.

The WITNESS. I produce a copy of my account with the Emery Coal Company from the 1st of April, 1876, as it appears on my books, which I hand to the examiner, and request that it be appended hereto and marked "Exhibit L., A. & Co. No. 1."

By Mr. WILSON:

196. Q. Is this the only account?

A. That is the only account I have.

(The paper produced by the witness is appended to the testimony and marked "Exhibit L., A. & Co. No. 1.")

The WITNESS. I also produce five papers, which are the papers upon which we made a settlement of the accounts up to the second day of July, 1877, between myself and the Emery Coal Company. I offer these papers in evidence, and request that copies of them may be filed with my testi-

mony, and marked respectively Exhibits L., A. & Co. Nos. 2, 3, 4, 5, and 6. No. 1 is a copy as far as I entered any transactions, on my own book. Nos. 2, 2, 3, 4, 5, and 6 are statements that were presented to me from time to time, which I filed away and kept to show how matters stood between us, instead of putting the accounts on my book. I had nothing on my book except some transactions where I received or paid money.

171 (The papers here referred to are appended to the testimony, and marked respectively Exhibits L., A. & Co. Nos. 2, 3, 4, 5, and 6.)

By Mr. DEAN:

197. Q. That does not include some coal.

A. Oh, no; there were some few transactions where I received money, or turned over money, which I entered on the book. I kept the book so that I understood perfectly well how we stood all the time, and that is all I supposed we should ever have occasion to do.

By Mr. WILSON:

198. Q. Did you ever have transactions with the Emery Coal Company which do not appear on your book and do not appear on these accounts?

A. I had some few transactions with them.

199. Q. What was their nature?

A. I have loaned them my check, for instance (that is not on the book), and they have repaid it again in the course of a few days. I have loaned them notes also, and they have paid the notes, and I have returned to them the notes that they gave me in bar when they paid the notes of mine. I never kept any account of them because it was a temporary accommodation for a few days, and when they would bring the note to me paid, I would *would* hand them the note that I took in bar and take and tear up my own note or destroy it, and I suppose they would do the same.

200. Q. Does all the coal or merchandise received by you from them appear on this account (Exhibit L., A. & Co. No. 1)?

A. No, sir.

201. Q. None of it appears?

A. Some of it appears there. What there is put down there appears.

202. Q. Upon what account were these last payments of $1,000 each made to you?

A. They were made on account of the notes I had against them.

172 203. Q. Which particular notes?

A. The ninety-day $4,000 note, the four-months $3,170 note, the note on demand for $10,000, and a due-bill which I took from them.

204. Q. Were they creditors on any particular note?

A. They charged them to me. When we settled I surrend' the notes and they receipted the bill upon my surrendering the notes that I held against them.

205. Q. There is an item here for $600, deposited to your account on the 15th of September; what was that?

A. Mr. Burrough asked me one morning if I wouldn't get Mr. Barron's note discounted for $620.59, and I did so and deposited to his account $600 of the money the next morning in his bank; and you will find on one of these exhibits "Barron's cash balance, $20.59." That is the $20.59 that I was short in my deposit in what I received on the notes. The

papers marked Exhibits L. A. & Co. 2, 3, and 4, are a statement of the account of the Emery Coal Company with me from the 1st of April, 1876, to and including the 30th of June, 1877.

206. Q. By these accounts what does it appear was due to you on the 30th of June?

A. $10,671.86, it appears, that I was indebted to them.

By Mr. DEAN:

207. Q. That is, that they were entitled to that much credit on the notes?

A. Yes, sir; I turned over two notes and a due-bill that I held, and then endorsed the balance, $1,000, and $1,059.80 on another note to make a settlement.

By Mr. WILSON:

208. Q. What did those accounts show?

A. These accounts show my indebtedness to the Emery Coal Company, which amounted on the 30th of June to $10,156.86.

209. Q. How was this account settled?

173 A. The settlement is shown by the paper marked "L., A. & Co. No. 5," which is herewith filed. The paper marked "Exhibit L., A. & Co. No. 6" is a recapitulation of what is shown on papers L., A. & Co. Nos. 2, 3, and 4.

210. Q. It appears from Exhibit L. A. & Co. No. 5 that on the second day of July, 1877, the Emery Coal Company was indebted to you in the sum of $7,940.42, with interest. From what date was the interest to be calculated?

A. With interest from the date of the note.

211. Q. When was that endorsement made on the back of the $10,000 note?

A. When we made that settlement.

212. Q. And the endorsement was what?

A. $2,659.58.

213. Q. At the time this settlement was made was there any statement made to you as to the condition of the business of the Emery Coal Company?

A. It had always been represented to me as being in a good condition; I hadn't any idea that they were in the condition that they were, and hadn't any idea but what they were able to pay all their debts and have considerable left.

214. Q. Was any statement made or balance-sheet exhibited?

A. No balance-sheet; no, sir; I never had a balance-sheet exhibited, but I have had statements given me from time to time to that effect by the parties.

By Mr. DEAN:

215. Q. You don't mean statements in writing?

A. No; I mean verbal statements.

By Mr. WILSON:

216. Q. When was the last statement made to you in regard to their condition, and what was its effect?

A. I can't say; I can't say when the last statement was made; I didn't keep any dates at all of any of the verbal statements.

174 217. Q. At the time of this settlement did you make any inquiry as to their obligations outstanding or stock on hand?

A. No, sir; I did not.

218. Q. At the time of this settlement, what, if any, arrangement was made concerning the payment of the other two notes which you had loaned to them?

A. There was no arrangement made; Mr. Burrough had promised me to get these securities to secure the payment of one of them.

219. Q. After the second of July did you loan your note or check to the said compay or either of them?

A. No, sir; I think not.

220. Q. After the second day of July, what, if any, merchandise, money, or other valuable thing was received by you from the Emery Coal Company other than the notes to which you referred yesterday?

A. I received between the 2d and 14th of July $403.02 worth of coal and wood at my yard, which I purchased from them at their wharf and hauled with my own teams to my yard; I have a receipt for it, and the receipt is endorsed upon the $10,000 note.

221. Q. Refer to the $10,000 note and state the endorsement thereon.

A. A copy of the $10,000 note is as follows:

$10,000.] WASHINGTON, D. C., *5th April*, 1876.

On demand, after date, we promise to pay to the order of Samuel Emery ten thousand dollars, at value received, with interest at the rate of eight (8) per cent. per annum.

(Sig.) THE EMERY COAL COMPANY,
By E. E. BURROUGH.

Endorsement upon that note is as follows:

$2.059.58. Received, July 2d, 1877, of the Emery Coal Company two thousand and fifty-nine dollars and fifty-eight hundredths ($2,059.58), on the *the* within note as per settlement of accounts to date.

SAMUEL EMERY.

175

| | |
|---|---|
| By coal account to July 14th | $403 02 |
| " M. G. Emery | 180 30 |
| " B. H. Duvall | 75 00 |
| Total | 658 32 |

222. Q. The coal is credited here as received on the 14th of July?

A. It was received between the 1st and 14th of July, inclusive. When Mr. Burrough told me on Sunday that he thought he should have to stop business, I didn't want to stop my teams, and I asked him if I couldn't send down to the wharf and get coal, and he said I could. I sent down my teams on Monday, Tuesday, and Wednesday, and Mr. Albright and Mr. Parker came out of the office on Monday and said to me, "You are still hauling coal." I said yes; that if they stopped I should have to be accountable to the assignee, or whoever they turned the business over to,

for whatever I received after the 14th, and I kept on hauling, I think, for three days.

223. Q. How much did you haul during that time?

A. I don't know; in the neighborhood of $100 to $130 worth.

224. Q. How many tons?

A. I don't know.

225. Q. Have you an account of it?

A. I have an exact account of it—my own account and theirs; I weighed it and they weighed it.

226. Q. Do you know on what precise dates the coal which is summed up as having been delivered on the 14th of July was delivered?

A. I think I have their bills and receipts stating the number of pounds and the different kinds of coal—so many pounds of one kind and so many of another, from the 1st to the 14th, each day. I thought I had that with me.

227. Q. On what date was that credit entered of the coal received by you?

A. That is entered on the 14th.

176 228. Q. What day of the week was that?

A. Satusday.

229. Q. Where was the entry made?

A. The entry was made at my office.

230. Q. What time in the day?

A. I can't say exactly. It was some time late in the afternoon of the 14th.

231. Q. When were the moneys received that were subsequently credited?

The WITNESS. Do you mean M. G. Emery's bill?

Mr. WILSON. Yes.

A. I received that and the order from Mr. Duvall at the same time I received the collateral securities for the payment of that note; I ordered the coal for M. G. Emery, and he looked to me to pay for it, and he gave me credit for it on his account, I suppose.

232. Q. How and in what way did you receive the money from M. G. Emery?

A. I haven't given credit for money; it is his bill; they rendered me M. G. Emery's bill, and I gave him credit for it on that note; I haven't received the money from him at all; we have an unsettled account between us, and I charged him on my account for that amount of coal.

233. Q. Is the account of Duvall the same way?

A. I gave the order to Mr. Duvall; I have an unsettled account with him, and he gave me credit for it, I suppose; it is the same thing.

234. Q. Were these bills of M. G. Emery and B. H. Duvall in the pocket-book with the other notes?

A. I think he gave me them with the notes that he gave me which he had got renewed—got duplicates; some of them were dated a couple or three or four days after the first notes were, but they were duplicates, all except the dates; the time had passed, and they gave the notes the day that he called for them.

235. Q. When and at what place were those two bills given to you?

177 A. I can't really say whether they were given to me at my office or my house, or whether it was at his house, and I can't say when they were given to me; as I said yesterday, it was the next day but one, I think, after the pocket-book was advertised as lost.

236. Q. Have you those bills now in your possession?

The WITNESS. What bills?

Mr. WILSON. The bills of M. G. Emery and B. H. Duvall.

A. No, I haven't them in my possession; I gave Mr. Duvall his, and told him to give me credit on his books, and I have Emery's bill filed in my office.

237. Q. When did you charge Emery and Duvall respectively with those amounts entered on the note?

A. I don't know without I look.

238. Q. Have you any recollection on the subject?

A. I have no recollection on the subject; I can't tell without looking.

239. Q. These endorsements were made on Saturday, the 14th of July?

A. Yes, sir.

240. Q. When was the assignment?

A. I think it was on the 19th.

241. Q. The following week?

A. Yes, sir.

242. Q. On Saturday, the 14th of July, you had not heard of any contemplated assignment?

A. No, sir, I had not.

243. Q. When was it that Mr. Burrough came to your house?

A. On Sunday.

244. Q. The next morning?

A. Yes, sir; he came up about noon on Sunday and said he had been in his office and had been through the whole of his books, and had found that he was very much mistaken in the position of their affairs;

178 that he believed that they had, as he had represented both to myself and Mr. Albright, assets largely above their liabilities, but he told me that he had been through and had found where his book-keeper had carried as assets those things that should not have been so carried; for instance, one article, he said they had an account against me for $9,000 or $10,000 on his books which was put down as assets, when he said that the book-keeper ought to know, and did know, that I held notes to overbalance those accounts.

245. Q. That was on Sunday morning, the 15th of July?

A. Yes, sir.

246. Q. At that time where were the notes which you subsequently received as collateral security?

A. On Sunday morning, the 15th of July, they were in my possession.

247. Q. When did you receive them?

A. I received part of them the next day but one after they were advertised as lost, and part of them the day after they were advertised as lost.

248. Q. You are sure that on that Sunday morning they were in your possession?

A. I would like to find out the paper before I answer that question, and see when they were lost.

249. Q. If you found out that they were lost on the evening of the 13th, and were not advertised until Saturday morning the 14th, what would you say?

A. Then they could not have been in my possession except those that he got renewed; those that were lost were endorsed over to me; he lost them on his way from the brick-yard back home, and they were ready to bring to me and all endorsed when they were lost.

250. Q. Would you recognize that advertisement if you saw it?

A. Yes, sir.

(Mr. Wilson hands witness the following advertisement:)

179 "LOST.—After 5 o'clock on Friday evening, July 13, a red pocket-book, containing the following notes: Thwing & Hitchcock to order W. Williams, $150; J. P. Glotzback, $176.70; R. McDonald, $237.03; R. McDonald, $237.03; R. A. Andrews, $361.46; R. Collins, $500; Washington Brick Company, C. F. Peck, president, $1,318.59; W. H. Baum, about $180; also containing other papers, all of which are of no value except to the owner.

"The public are cautioned against negotiating any of the above notes, as payment of them has been stopped.

"A reward of $10 will be paid for their return to Samuel Emery, coal-yard, corner 1st and B streets northwest."

The WITNESS. That is it; I couldn't have received the notes till Monday morning then; I think it was the second day after they were advertised; I don't think it was Saturday morning that I received them, for one day elapsed, and I think he got some of them renewed; I think I can ascertain what notes he got renewed and brought to me on Saturday; for instance, the brick company's note, he sent to get that renewed on Saturday, but President Peck told him he could not renew it without consulting the board; that he didn't like to do it without consultation with the board, which would meet a day or two afterwards, but before the board met the pocket-book came to hand and he gave me the note that was drawn; he was only carrying out the agreement that he made with me when I gave him the note for $4,750.

251. Q. In the advertisement I see no mention is made of the Mineral Springs note?

A. That is included; he offered it to me because he couldn't get the amount that he said he would give me.

252. Q. When did you receive that note?

A. On Saturday evening, when I received the others.

253. Q. It was not in the pocket-book?

A. No.

254. Q. When did you receive the duplicates?

A. I think I received those that he got renewed on Saturday even-
180 ing, and the others he gave me when he took them out of the pocket-book; that Mineral Springs note is not of much account.

225. Q. Whatever notes or merchandise were received by you after Sunday, the 15th, were received by you with knowledge of the business condition and failing circumstances of the Emery Coal Co.?

A. I shall have to answer that in two parts: In the first place, although

he told me that his condition was not as I supposed it was on Sunday, yet he had not determined what he would do. He said he was going on Monday to consult his attorneys and see what was best to do with his business; that he was fearful he could not meet Langdon and Albright's note, and that he should go and consult his attorneys and determine what to do. If I received these collateral security notes on Monday morning, I don't know that I received any others, and I received no merchandise except what was hauled there from their yard to mine Monday, Tuesday, and Wednesday, the 16th, 17th, and 18th, and perhaps on Thursday, the 19th. I don't know what day they stopped. At any rate, I kept on hauling, and I received merchandise, and that is all that I received.

256. Q. Please state as accurately and fully as you can precisely what information Mr. Burrough gave you on Sunday, the 15th of July.

A. He said he had been examining his accounts, and had found that his book-keeper had included in his assets such amounts as should not have been put down as assets—that is, over and above liabilities—and he found he was not in the condition that he supposed he was in.

257. Q. What else?

A. I don't recollect the conversation any more than that.

257½. Q. About his intention; what did he say he was going to do?

A. He said he was going to see his lawyer, and was going to determine what to do, but hardly knew himself then what to do.

181 258. Q. What did he say in regard to his maturing obligations?

A. He said he didn't believe he should be able to meet the note of Langdon and Albright that became due, I think, some time during that week.

259. Q. Do you know for how much?

A. I think he said it was for $3,500.

260. Q. Did he mention particularly the note of Langdon, Albright & Co.?

A. He said he owed them a note that he shouldn't be able to meet, he thought; he didn't know what to do. He seemed to be a good deal worried himself.

261. Q. What did you say to him?

A. I don't recollect.

262. Q. What advice did you give him?

A. I was very lame at the time with rheumatism, and was lying on the lounge in my chamber when he came up and talked with me a few minutes and then walked out.

263. Q. Did you give him any advice?

A. I don't know whether I did or not; I can't say.

264. Q. You stated yesterday that you declined to accept any assignment?

A. He said, "I would like to secure you." He said he would give me a bill of sale of his horses and carts, and I told him "No; I didn't want that." Says I, "If you have to stop, all I want is the security that you promised me on the borrowed money, the proper debt that you are owing me, and I will take my chances with the others."

265. Q. And then he went away?

A. And then he went away; yes.

266. Q. When did you see him next?

A. I don't know whether I saw him Monday or not; I can't say. I don't believe I saw him Monday at all. I don't think he came to my office on Monday.

182 267. Q. Have you a distinct recollection of the day on which the settlement was made with the Emery Coal Co. which was referred to in a previous question?

A. No; I don't know that I have; I don't recollect now; I can't say.

268. Q. Where was the settlement made?

A. It was made at my office; I had urged them to a settlement for months before that, and had asked them 3 or 4 times to meet me there to square up our accounts; I carried their notes, and didn't want to continue to carry them; I had three or four times asked them to come and have a settlement; they came there that evening by appointment to have a settlement, and then they asked to defer it, but I said, "Now we are here, and we have had a number of engagements heretofore to meet for settlement, now let us have a settlement while we are here;" and we had a settlement; I struck off and made some little changes, and then we settled the account and gave up the notes on the 10th of July.

269. Q. In whose handwriting is the original of Exhibit L., A. & Co. No. 6?

A. Mr. Burrough's handwriting; I knew the accounts had been standing a long time, and I had urged a settlement so as to have it fixed up; Mr. Burrough said he was so busy that he could not attend to it, and put it off in that way.

270. Q. The calculation seems to have been made to the 2d of July?

A. July 1st was Sunday; they misdated it; they dated it at first on the 1st, and then they found that the 1st was on Sunday and changed it to the 2d.

271. Q. Please look at the endorsement on the note and see if the same mistake was not made there.

A. I put the endorsement on myself; if I settled on the 10th I put the endorsement there, in the presence of Mr. Burrough and the other members of the company, in less than three minutes after we had set-

183 tled. [After examining the endorsement.] Yes, it is July 2d, but it was July 10th that that endorsement was made; I put it July 2d because it was settled up to 1st, and I marked it 1st and then altered it to the 2d the same way; it wasn't settled on Sunday, because I don't do business on Sunday.

272. Q. The endorsement was actually made on the 10th?

A. On the 10th, I presume, from the fact that L., A. & Co. No. 6 is dated on the 10th.

273. Q. This settlement having been made on the 10th of July, what was the occasion of the further settlement or endorsement made on the ten thousand dollar note on the 14th of July?

A. He brought it to me to hold as security for the payment of that note, with the notes that he promised me; he brought me the bills of Emery & Duvall, and this bill of $403.02, as he could not make up the amount of notes that he had promised to give me; I told him I wouldn't receive those open accounts as securities, but I would give him credit for them on my note, and he receipted them and I gave him credit for them on the

note—endorsed it on the back of the note; that was the occasion of his bringing them at that time.

274. Q. When was that?

A. At night on the evening of the 14th of July; he brought them when he brought the notes that he had got duplicated from parties for those that he had lost.

275. Q. The last credit on your account with the Emery Coal Co. appears to have been on the 9th of February, 1877; between that date and the 10th day of July had you received from the Emery Coal Co. any money or other valuable thing for which they were entitled to a credit on their account?

A. I had not received anything from them except what is charged to me on Exhibits L., A. & Co. 2, 3, and 4; if I had received any money from them I should have credited them with it on my book.

184 276. Q. None of the items that appear on Exhibits L., A. & Co. Nos. 2, 3, and 4, subsequent to January 31st, appear on your account with the Emery Coal Company as entered on your own books?

A. No, none of them appear on my books; that is a true copy of all the transactions on my books with the Emery Coal Company.

277. Q. Why were not the amounts that are charged to you on these accounts entered on your book?

A. Because I received these (Exhibits L., A. & Co. Nos. 2, 3, and 4) from time to time, and filed them away and held them as the evidence of the standing of our accounts, instead of taking the trouble to put them down on my books.

278. Q. When were the receipts of the Emery Coal Company written on Exhibits L., A. & Co. 2, 3, and 4?

A. They were written on the day of the settlement, the 10th of July, 1877, and the endorsement was put on the note the same day.

279. Q. Had they been in your possession previous to that time?

A. Some of them had.

280. Q. Which?

A. They all had; Nos. 2, 3, and 4 were made out up to the 30th of June; they had all been in my possession since about the 2d or 3d of July, I think; the last one was brought to me some time between the 1st of July and the 10th; I sent down to the office purposely to ask the bookkeeper to send me a bill of what I had received, so that I might be enabled to put it on my book, as they had charged it to me, so that we could compare accounts; they weighed the coal and charged it, and we weighed it and kept an account of the loss or gain; and I wanted to see their account; they sent the May account, which I got on the first of June, and the June account, which I got on the first of July.

185 281. Q. Where were those receipts signed—I mean numbers 2, 3, and 4?

A. At my office, corner of 1st and B streets northwest.

282. Q. And by whom?

A. They were signed by Samuel Emery, jr.

283. Q. When?

A. On the evening of the 10th July, 1877.

284. Q. Who were present?

A. My bookkeeper was present, and I guess my boy at the office was

present; Mr. Burrough was present; I think Mr. Sailer was; Samuel Emery, jr., was present also; I know that Mr. Sailer was there part of the time; I do not know whether he was there when the receipts were signed or not.

285. Q. Was the receipt on L., A. & Co. No. 6 written at the same time?

A. Yes, sir; it was written at the same time by E. E. Burrough, at my request; I asked him to condense this account into smaller compass, so that I could file it away and save my filing all the papers; so he sat down and made it out and receipted it; that was the occasion of my getting number 6.

286. Q. After the first of April, 1876, what became of the books that you had previously used in your coal and wood business?

A. I suppose they are in the possession of the receivers of the Emery Coal Company; I sold the books, accounts, and business all together to Sailer, Burrough, and Emery, jr.; I sold the books and they took possession of them, and I presume they were passed over to the receivers; I do not know anything about it.

286. Q. You have never had them since?

A. I have never had them in my possession since; I sold them my business and accounts and all my interest.

287. Q. In what book does the account marked "L., A. & Co. number 1" appear?

186 A. That is my ledger account from the ledger that I have had in my business for the last five years; that is my own private ledger.

288. Q. Do you keep any other books?

A. I keep an order-book and ledger.

289. Q. That is all?

A. That is all.

290. Q. Any other books?

A. No other books.

By Mr. DEAN:

291. Q. Did you have any other for your stone business?

A. That is in the same book that all my other business is in.

By Mr. WILSON:

292. Q. I understand you to say that when you sold the business you sold all the credits on the books?

A. I sold all the credits on the books.

293. Q. What became of the accounts?

A. I do not know, I am sure, whether they collected them or not; I do not know what disposition they ever made of them.

294. Q. Did you give them all the outstanding accounts, without any exceptions?

A. Everything, without any exceptions.

295. Q. You did not reserve any or collect any yourself?

A. I did not reserve any or collect any myself except what is charged to me on those exhibits.

296. Q. Did they collect any for you, and give you credit for them?

A. No, sir; they did not; I sold them my business right out; I counted

up what the business had cost me, as I said the other day, and found, according to the estimate of the gentlemen who had made the examination, that I had made 10,000 and some two or three hundred dollars; I
187 gave credit to Burrough and Emery for services rendered to that amount up to date, and then took their (the Emery Coal Co.'s) notes for what my coal and wood business had cost me from the time I started up to the first of April, 1876; that is, all that I received from the proceeds of my business in coal and wood.

297. Q. I inquired of you yesterday about the settlements; I want to be a little more particular about the sale made on the first of April, 1876; in what way, and from what books, and by whom was the account made up of that sale?

A. They have that account; I did not keep it; they had the accounts and the statements of it made up; the account of what coal they had on hand, and stock, horses, carts, fixtures, &c.

298. Q. Did you examine that?

A. I did not examine it at all; Mr. Burrough named his brother as one, and Mr. Hodge, my present bookkeeper, was the other, who made up the account of thirty odd thousand dollars that the coal business was worth, the amount that I had expended in the business; there was ten thousand and some hundred dollars difference; I sold out for what it had cost me up to date, and gave them credit for the balance; I sold the books, accounts, stock and fixtures, and good will; I said the other day that I believed the Republican was the only paper that that advertisement was published in; I have thought about it since, and I now think that the same publication was put in the Morning Chronicle and the Evening Star—the same notice of sale.

299. Q. I wish you would examine in regard to that and be prepared to state positively hereafter.

A. I know those papers were all paid for publishing it; I had the Republican and had a copy of it saved with the advertisement in, which I gave to Mr. Dean.

Adjourned to 2 o'clock p. m., Wednesday, Oct. 17th, 1877.

188 OCTOBER 17, 1877.

Continuation of the direct examination of Samuel Emery.

By Mr. WILSON:

300. Q. Examine the two papers now shown to you, marked Exhibits L., A. & Co. Nos. 7 and 8, and state whether No. 7 is in your handwriting, and what Nos. 7 and 8 are.

A. All below the second line of No 7 is in my handwriting, I believe; No. 7 is a statement of what I had and of what I sold out to the Emery Coal Company on the 1st of April, 1876; the stock was all taken up to the 1st of April; we didn't complete the arrangements until near the last of April to get my advertisement in the paper, but these are the amounts that I sold. I think No. 8 is in the handwriting of Samuel Burrough, and it is a statement of the account as it stood and my receipt to April 25th, 1876, from the Emery Coal Co. for "their four promissory notes, as indicated at bottom of this statement, the same being for settlement of my claim, $21,170.85, as per this statement." The receipt upon No. 8 is the

receipt I gave when I sold my interest out to the Emery Coal Co. up to the 1st of April, 1876; what was sold or collected or what business was done after the 1st of April, 1876, was accounted to the Emery Coal Co. We didn't get our arrangements made to square this up until the 25th of April, and I think on the 26th it was published in the papers. The following entries are made in pencil on Exhibit L., A. & Co. No. 7, and I read them so as to have them in the notes, for fear that they may be rubbed out:

| | | |
|---|---|---|
| Apr. 1. | By note of Emery Coal Co. on demand..... | $10,000 00 |
| " " " " " " " " | 60 days..... | 4,000 00 |
| " " " " " " " " | 90 days..... | 4,000 00 |
| " " " " " " " " | 4 mo's..... | 3,170 00 |
| | | 21,170 00 |

189 By Mr. DEAN:

301. Q. Who prepared Exhibit No. 8?

A. I think it is in the handwriting of Mr. Samuel Burrough.

302. Q. Can you state the date when it was signed by you?

A. I suppose it was signed April 25, 1876; it was signed when it was drawn.

By Mr. WILSON:

303. Q. Examine the papers which are now shown you, marked Exhibits L., A. & Co. Nos. 9, 10, and 11, and state what they are, and whether the endorsements on them were made by you.

A. These are notes, to which I have referred, that I took from the Emery Coal Co. when I sold out my business to them up to the 1st of April, 1876. The sixty-day note (No. 9) was paid, and I endorsed on the back the payments that I received; the last payment I received didn't pay the note by some three hundred and odd dollars; I didn't want to carry the note, and I took the Emery Coal Co.'s due-bill for that amount, which due-bill I presume the receivers have; I endorsed the note and gave it up to the Emery Coal Co. The ninety-day note (No. 10) and four months note (No. 11) I held against them until we had a settlement, on the 10th of July, when I was owing them on account some $10,000 or $11,000, I can't state the amount now; at any rate it was enough to more than balance what was due me on these two notes and due-bill; that was the time I had the settlement. I endorsed the notes and scratched my name off the back and handed them to them on the day of settlement, and credited the excess that I owed them on account over and above the amount of the notes and due-bill on the $10,000 note that I still have in my possession.

304. Q. Those notes, when the settlement was made, were considerably overdue?

190 A. They were considerably overdue—yes.

305. Q. Why did you let them run so long?

A. I let the notes run because I wanted to have a settlement; I wanted a settlement six months ago, and proposed to turn over one or more of the notes then, but they were busy, and didn't give me a chance to have a settlement, but at last I got a settlement with them and turned the notes over to them and squared up my bill with them and took a receipt up to date.

306. Q. Had you made frequent applications for a settlement before that time?

A. I had frequently; I demanded more than I got.

307. Q. How did you manage to secure a settlement at last?

A. We happened to meet together by appointment after setting a number of times to meet for a settlement; they came to my office on that afternoon, and after they came there Mr. Burrough said, "Now, I have got to go to some other place to attend to something else," and he wanted to put it off to some other time, but I told him "We have set a number of times to settle these affairs, and now we are here and I want to have it squared up, and it won't take but a few minutes;" so we went to work looking over the accounts, made some corrections of the accounts that were not right, and settled up, and I endorsed the notes and turned them over to the Emery Coal Co., together with the due-bill for $356 at the same time.

308. Q. That was the time when the due-bill was taken up?

A. That is the time when the due-bill was surrendered to them—at the same time that those notes were given up.

309. Q. What accounts did you go over?

A. Over the accounts that they had rendered me; I would like to say in connection with my last answer that they had, previous to that, after the 1st of the month, made me statements of what I was indebted to them?

By Mr. DEAN:

191 310. Q. Are those the same statements of which copies are filed marked Exhibits L., A. & Co. Nos. 5, 6, 7, and 8?

A. Yes; I settled by those statements that were filed here the other day.

By Mr. WILSON:

311. Q. Were the books of the concern there, and were they referred to?

A. No, sir; I didn't see their books at all.

312. Q. Will you be kind enough to examine the papers now shown you, marked Exhibits L., A. & Co. Nos. 12 and 13, and state what they are?

A. I was under the impression, and stated, I think, that these notes were both given in April, but I see one was given in May; these are the notes that I loaned to the Emery Coal Co. for their use, and took their notes due in bar in lieu of them to hold until these were paid; that brought them on the 21st of June; Mr. Burrough could not pay them at that time; I went to see him; he was sick at the time and he said that they had not the means to take them up and asked me if I would not extend the notes—continue them along; he wanted the amount divided in this way; one for thirty days for $4,750, and one for ten days for $2,500, and he said he would be sure to pay the $2,500 note at maturity and he would give me collateral security for the payment of the $4,750; that is the way we divided them; I went to the bank myself with them; he asked me if I wouldn't take them up; he sent a man up with his note signed for me, and notes drawn for me to sign, but I did not want to transact business through another party and so I went down to see Mr. Burrough myself, and took the notes up to the bank myself and asked Mr. White to put them to the credit of the Emery Coal Company and surrender me the notes that were due that day; Nos. 12 and 13 are the notes that he surrendered that day; when I renewed these amounts, one for $4,750 and one

192 for $2,500, I took these from Mr. White, the cashier of the bank, and scratched the name off of them and enclosed them, I think, in

a note and sent them to the Emery Coal Co.; I had given my notes to them and got them discounted for the Emery Coal Company and received their notes in lieu of the two that I gave them, and I think I enclosed these two in an envelope and either sent them to Mr. Burrough's house or to the office of the Emery Coal Co., I forget which.

313. Q. What became of the notes to you that were given you upon renewal?

A. He paid the $2,500 note in ten days, according to agreement; the $4,750 note I paid to the Metropolitan National Bank on the 24th day of July.

314. Q. And that you have in your possession?

A. That I have in my possession.

315. Q. Have you it here?

A. I don't think I have.

After the witness had had all the preceding testimony read over to him he stated that he desired to make the following corrections:

To the answer to the 3d interrogatory I would like to add that Samuel Emery, jr., was not married to Mr. Sailer's daughter when the Emery Coal Co. was formed and bought Mr. Emery out.

The answer to the 15th interrogatory makes me say that the books, &c., were handed over to the receivers; I meant to say they were handed over to the Emery Coal Co.; no receivers had been appointed at that time.

Question 53d assumes that I allowed Burrough and Samuel Emery compensation on the 1st of April, 1876. I allowed them no compensation on that day; I made them a present of the amount my business was worth over and above what it cost.

In the answer to question 154 I meant to say Monday instead of Thursday.

193 I understood question 174 to have reference to the yard instead of the wharf, as my answer shows that I had nothing to do with the rent of the wharf after April 1st, 1876; the Emery Coal Co. paid the rent of the wharf to John Van Riswick from and after April 1st, 1876.

SAM. EMERY.

Cross-examination waived by counsel for defendants.

EDWARD E. BURROUGH, a witness produced, affirmed, and examined on the part of the complainants, deposes as follows:

I am thirty-five years of age; my residence is Washington, D. C., and I am one of the defendants in this suit.

Direct examination by Mr. WILSON:

1st. Q. How long have you resided in Washington?

A. Since August, 1874.

2. Q. Where did you reside before you came here?

A. In Baltimore.

3. Q. In what business were you there engaged?

A. The coal business at that time.

4. Q. How long had you been engaged in the coal business in Baltimore?

A. About six months.

5. Q. With whom were you associated?

A. I was not associated with anybody; I was clerking for my father.

6. Q. What was your father's name?

A. Jacob Burrough.

7. Q. Under what firm-name did he conduct the business?

A. Burrough and Co.

194 8. Q. Is that firm still in operation?

A. Yes, sir.

9. Q. Where is their place of business?

A. On Cathedral street, near Dolphin.

10. Q. Have you any interest in that business?

A. I have not.

11. Q. Have you had since you left Baltimore?

A. No, sir.

12. Q. What were your relations with said firm before you left Baltimore?

A. I was a clerk.

13. Q. What compensation did you receive?

A. I received no salary; I went home to my father's house and went into that business with him and helped him along.

14. Q. Did you have any interest in the business, either directly or indirectly?

A. No, sir.

15. Q. What occupation did you engage in when you came to Washington?

A. I went into the coal business with Mr. Emery; if you want the exact details of this thing, there is an intermediate business that I carried on while there—I was selling mill-stone dressing machines.

16. Q. Where was that?

A. I sold them in Baltimore, and sold them also at Georgetown; the regular business that I was engaged in was coal, but I attended to the sale of mill-stone dressing machines for a few months before I came to Washington; I came here as a clerk to Mr. Emery.

17. Q. State now what that business was, and with whom you were engaged.

A. I was engaged in selling mill-stone dressing machines for Larer and Co., of Pottsville.

18. Q. At a salary?

A. No; on commission.

195 19. Q. After you came to Washington you went immediately into the employ of Samuel Emery?

A. Yes, sir.

20. Q. In what capacity?

A. As clerk.

21. Q. What business did he at that time carry on?

A. He was commencing the coal business, and he carried on the stone business.

22. Q. Was he engaged in the coal business at the time you came over here?

A. No, sir.

23. Q. He commenced when you came?
A. He commenced when I came.
24. Q. Where was that business carried on?
A. At first at the corner of 1st and B northwest, and afterwards at the Sixth-street wharf.
25. Q. Upon what terms did you originally enter his employ?
A. Under an agreement to receive a salary of a thousand dollars a year.
26. Q. Was that agreement in writing?
A. No, sir.
27. Q. What were your duties, and what service did you perform?
A. I had general charge of the business.
28. Q. What charge, or direction, or control, had Mr. Emery himself?
A. He had supervision over me; I acted under him as his foreman.
29. Q. Did you not have practically the whole charge of the coal business in all its details?
A. No, sir.
30. Q. What direction did he give?
A. He controlled the amount of purchases and sales and the terms upon which the coal was sold, and the collections.

196 31. Q. Was he habitually at the office?
A. He was at the office at 1st and B streets every day, pretty much; at the wharf he did not come so often; I presume you might say he was habitually at the office.
32. Q. Who else was associated with you in that business?
A. Samuel Emery, junior, William E. Hodge, and others.
33. Q. Did Samuel Emery, jr., commence at the same time you did?
A. Yes, sir.
34. Q. Did Hodge?
A. Hodge commenced about a month, or possibly two months later; when I first began, Mr. Hodge was the first employed outside of Emery and myself, and then came a young man by the name of French, and after that a person by the name of Foos.
35. Q. When was the business transferred in part or conducted at the wharf?
A. The business was never transferred to the wharf; the wharf was added on to the 1st and B street business; that is, I think the lease was made on the 1st of January, 1875; I entered into Mr. Emery's employ in September, 1874.
36. Q. Was there very much business carried on in coal before the wharf was rented?
A. The amount of purchases made before we got the wharf was about two thousand tons altogether of hard and soft coal, and some three hundred cords of wood, I think.
37. Q. How was your salary paid?
A. Any of the clerks were allowed to draw small amounts; any large amounts—10, 15 or 20 dollars—we went to Mr. Emery for.
38. Q. What, if any, other compensation did you receive in money between that date and April 1st, 1876?
A. No other compensation.

197 39. Q. What was the compensation received by Samuel Emery junior?

A. Sam. Emery received the same compensation I did, but I think he overdrew his account; I am not sure.

40. Q. Was there any written agreement or memorandum of any kind made by Mr. Samuel Emery, senior, with you or with Samuel Emery, junior, in regard to your employment by him?

A. None that I know of.

41. Q. Who kept the books of Mr. Emery?

A. Mr. Hodge was supposed to have kept them.

42. Q. You say that Sam. Emery overdrew his account; was your account overdrawn?

A. I think not.

43. Q. On the 1st of April, 1876, how did your account with Mr. Emery stand, so far as compensation was concerned?

WITNESS. Do you mean how my private account stood on those books?

Mr. WILSON. Yes, sir.

A. I don't recollect exactly; it would be very hard for me to carry such figures as those is my head.

44. Q. What were the equipments of the yard, and facilities for doing business owned and possessed by Mr. Emery at the time you came, and subsequently up to the first of April, 1876?

A. At the corner of 1st and B there was a set of Fairbanks scales, two desks, a brick building for an office, a frame wood-shed and fencing, several hundred feet of plank flooring and partitions, and some desks, chairs, and a stove; I do not recollect anything else in the office; and some eight or nine horses, carts, and harness; at the wharf there was quite a large amount of blocks and falls, iron and wooden hoisting tubs, a set of Fairbanks scales, fencing, and frame office, and lots of little things that belong around a wharf, and tools of one kind and another.

198 45. Q. Were those all purchased after you came there into his employ?

A. Yes, sir; they were all purchased after the coal business was started, except two gray mules, I think.

46. Q. What signs were at the office and wharf and on the wagons?

A. A few of the carts, not all of them—had S. Emery's name on them; the uptown office had on a narrow sign "S. Emery," and at the wharf there was a sign, "Emery's Coal Wharf," with the name of different kinds of coal and wood.

47. Q. What, if any, change in the relations of Samuel Emery, senior, to you and to Samuel Emery, junior, occurred between the time you went into his employ and April, 1876?

A. No change that I know of.

48. Q. When was there a change in the business?

A. A change was made on the 1st of April, 1876.

49. Q. What was that change?

A. Mr. Emery sold out to Charles C. Sailer, Samuel Emery, junior, and myself.

50. Q. What, if any, agreement or memorandum was made at the time, or has since been made, relative to said sale or transfer of the business?

A. The account of stock was taken on the last day of March and completed about ten or eleven o'clock on the morning of the first of April.

51. Q. By whom was it taken?

A. By Mr. William E. Hodge, Mr. Sailer, Mr. Samuel Emery, jr., and myself; a statement of the accounts due to the firm that were transferred to Mr. Sailer, Sam. Emery, jr., and myself, was made by Mr. Samuel G. Burrough, and the settlement between Mr. Emery and us was made from that paper.

52. Q. So far as you know, is that account of stock now in existence?

199 A. I think it was on the invoice-book that was kept at the wharf.

53. Q. Was it shown to Mr. Emery?

A. Yes, sir.

54. Q. What was the contribution made by you to the assets of the new firm, and what consideration was paid by you for the purchase of an interest in the business?

A. Mr. Emery presented me with about $5,600, which was placed to my credit on the books of the Emery Coal Company.

55. Q. In what form was that presentation made?

A. There was a surplus of a little over $10,000 in the coal business over and above what Mr. Emery had invested in it, and that amount he divided between Samuel Emery, jr., and myself; about $5,600 of that was placed to my credit, and the balance to Mr. Samuel Emery, jr. I may be mistaken about the exact amount, but that is within a few hundred dollars of it; it was $5,400 or $5,600; I forget which.

56. Q. You mean by that, that taking all the assets and liabilities of the firm there was a surplus of $10,000?

A. $10,200 had been made in the business.

By Mr. DEAN:

57. Q. Were there any liabilities of the business at all?

A. No liabilities at all. There was a surplus over and above the amount that he had invested.

Mr. DEAN (to the witness). You had better listen to these questions before you answer them, or you will find yourself down on the record for things that you did not intend to say.

By Mr. WILSON:

58. Q. $10,000 was arrived at, as I understand, by taking all the money that Mr. Emery had invested in the business and putting that on one side of the accounts, and then putting on the other side the stock that was on hand and the amount of money due Samuel Emery in that busi-

200 ness, whether in notes or open accounts, and the difference was $10,000?

A. $10,200, I think it was.

59. Q. So that in the $10,200 was included moneys due Samuel Emery on book accounts and notes for coal sold?

A. Yes, sir.

60. Q. Do you know whether that was all paid?

A. Very nearly all paid.

61. Q. What proportion?

A. I think all but about $500.

62. Q. What was paid by Samuel Emery, jr., for the purchase of his interest in the firm?

A. Mr. Emery presented him with the remainder of the $10,200.

63. Q. That was all the contribution that either of you made?

A. That was all.

64. Q. What was paid by Mr. Sailer?

A. Mr. Sailer put in $6,050; he was to put in $12,000.

65. Q. Was there any written agreement between you as to your respective shares in the business?

A. There were articles of copartnership, but I do not know where you will find a copy of them. I think I could get one of them, probably.

Mr. WILSON. I wish you would.

66. Q. Will you state at what figure the open accounts were put in the invoiced statement of the affairs of the business of Sam. Emery, or do you remember the aggregate?

A. I do not think I could give you exactly the figures. The total amount was upwards of $30,000; that is, accounts, fixtures, and the stock on hand.

67. Q. State, as nearly as you can, the proportions—how much stock, how much on open accounts, &c.?

A. I think the outstanding accounts amounted to about $13,000,
201 the fixtures to about $7,000, and the stock on hand to about $12,000. I am not sure that that is right; that is merely from recollection, without looking the matter up for a long time.

68. Q. What were the respective interests of the new firm in the new business?

WITNESS. Do you mean in reference to the division of profits?

Mr. WILSON. I mean their interests.

A. Equal.

69. Q. That is, the profits and liabilities were equally divided; is that it?

A. Yes, sir. Mr. Sailer, Samuel Emery, jr., and myself were equal partners in the business carried on in the name of the Emery Coal Company.

Adjourned to 2 o'clock p. m., Oct. 18th, 1877.

OCTOBER 18TH, 1877.

Met pursuant to adjournment.

Present, Mills Dean, esq., for the defendants; counsel for the complainants not being present, adjourned to 2 o'clock p. m. Oct. 19th, 1877.

OCTOBER 19, 1877.

Continuation of direct examination of Edward E. Burrough.

By Mr. WILSON:

70. Q. You have stated that you, Mr. Sailer, and Samuel Emery, jr., became, on the 1st of April, 1876, equal partners in the business; members of the firm doing business under the name of the Emery Coal Company. What share or part in the transaction of business was taken by the members of the firm respectively from that time?

202 A. The proposed work for each of us was laid out. Sailer was to be financial manager and have general charge at the wharf; I was to do the buying and look after the sales, and Mr. Emery was to look

after local retail sales—the small end of the business. The most of the work fell on my shoulders—a little of everything.

71. Q. Was that arrangement carried out?

A. No, sir; I stated the most of the work fell on my shoulders.

72. Q. By whom were the books of the firm kept?

A. By Samuel G. Burrough; that is, my brother.

73. Q. By whom were the checks of the firm signed?

A. The signatures first left at the bank were left by Mr. Sailer and myself, and at the request of the paying teller the individual name of each member was appended to the signature of "The Emery Coal Company," by C. C. Sailer and by E. E. Burrough; during the month of August Mr. Samuel Emery, jr., left his signature there at the bank, and from that time drew checks as he wanted to, appending his individual signature also.

74. Q. Do you mean to say that money was drawn on checks of either one?

A. Either one of the members of the firm.

75. Q. What was done with the books of Samuel Emery when the partnership or firm was formed on April 1st, 1876?

A. I do not exactly understand the question; do you mean what was done with the books, or the accounts on the books?

76. Q. What became of the books themselves?

A. We bought all the accounts and retained possession of all books.

77. Q. And were they retained in the same place?

A. No, sir; the First and B street was the principal office at first, but under our arrangement we made the wharf at the foot of Sixth st. the principal office.

78. Q. When were they moved?

203 A. I don't recollect the exact date, but some time after the settlement that we had with Mr. Emery, which took place about April 10, 1876. I couldn't state whether they were moved for a month; I think possibly it was somewhat later. My recollection is that my brother took charge of the First and B sts. office for some time, but he afterwards went to the wharf and took charge there and took the books with him when he went down there.

79. Q. What change was made in the signs that were used on the carts and at the wharf after the 1st of April, 1876?

A. There was no change made in the signs; we did not get any new signs. We had some ten or eleven carts and we didn't get signs for them all. A great many of our customers objected to the use of the firm-name on the carts because we made deliveries for them in the retail trade around town, and so we didn't put signs on all the carts; there were signs on a few of the carts that might have been on occasionally and off occasionally.

80. Q. What signs were they?

A. Those were the signs put on by Mr. Emery—Samuel Emery's name.

81. Q. What signs were there at the wharf?

A. The only sign at the wharf was a large one, which was blown down, and had "Emery's Coal Wharf" on it, and merely the names of the kinds of coal and wood that we kept; the office was moved from the lower side of

the street to the north side, and in doing that the signs that were on the building were destroyed.

82. Q. Did the Emery Coal Co. ever have any sign there showing its name?

A. No, sir; I don't think it ever had any sign anywhere.

83. Q. What means had you other than the presentation of credit or whatever you may call it, by Mr. Emery, which you have testified to?

The WITNESS. What means had I outside of that?

204 Mr. WILSON. Yes.

A. Only a few hundred dollars; it amounted to nothing.

84. Q. You made no contribution to the firm other than that?

A. No, sir.

85. Q. From the first of April, 1876, what was the interest of Samuel Emery, *jr.*, in the firm?

A. He had no interest.

86. Q. What pecuniary interest had he in it?

A. I don't understand your term "pecuniary"; do you mean how much money was due to him?

87. Q. I will say "interest;" what pecuniary interest had he in it?

A. I don't know that he had any interest in it. I don't understand your term "pecuniary" at all; if you mean how much money we owed him I think I can give you about the amount.

88. Q. How much money had he in the firm, and how much money did the firm then owe him?

(Question objected to by Mr. Dean as tending to confuse and mislead the witness.)

A. He had no money in the firm; we owed him about $21,000 when we started.

89. Q. How was that indebtedness created, and of what did it consist?

A. We gave him notes to that amount for his interest in the business which expired at that time.

90. Q. What notes were given?

A. One on demand for $10,000, I think two of $4,000, and one of 3,100 and some dollars; I don't remember exactly now the amount, but that is about it.

91. Q. Which of said notes have been paid?

A. They have all been paid except a portion of the $10,000 demand note.

92. Q. When was the demand first made for the payment of the demand note?

205 A. I couldn't state exactly the time. He asked from time to time for money and we gave it to him as we had it, cancelling the smaller notes first.

93. Q. Was demand for the larger note made before any of the smaller notes became due?

A. No, but after they became due; they became overdue and he held them as overdue paper.

94. Q. What reply was given when demand was made for the payment of the $10,000 note?

A. It would be very hard to state exactly what reply was made; if it was not convenient to give him anything at the time that would be about the reply. I couldn't state the exact words.

95. Q. On how many different occasions was demand made of you by Mr. Emery for the payment of that $10,000 note?

A. There was a demand made in February, 1877; that is the only one that I recollect now—that is, until we made a settlement in July of this year.

96. Q. What answer was given at that time to Mr. Emery?

A. I couldn't state exactly the answer that was given him.

97. Q. What information was given him at that time, or at any other time prior to the 1st of July, 1877, as to the condition of the business of the firm?

A. The only information given Mr. Emery was general statements taken from my brother's monthly statements when he made them out, which was done once in three months—quarterly statements, I suppose, you would call them.

98. Q. He was then furnished with statements once in three months?

A. Not regularly once in three months, but when he asked for information we gave him such information as we could approximately from the books, and any information I gave him was derived from my brother's accounts.

206 By Mr. DEAN:

99. Q. Do you mean that you gave him written statements?

A. No, sir.

By Mr. WILSON:

100. Q. What information did you give him personally as to the condition of the business of the firm?

The WITNESS. At what time?

Mr. WILSON. At any time prior to the first of July, 1877.

A. I told him what I believed—that we were doing tolerably well.

101. Q. Did you or your book-keeper ever make to Mr. Emery any statements in writing of the condition of the business?

A. Not that I know of.

102. Q. When was the last time, prior to the 1st of July, that you had any conversation with Mr. Emery in regard to the condition of the business of the firm?

A. It would be very hard for me to recollect; on no particular occasion that I know of.

103. Q. Can you remember no occasion prior to the 1st of July, 1877, when you had any conversation with Mr. Emery, sr., as to the condition of the firm?

A. We had a conversation about the time Mr. Sailer went out—about the middle of May, 1877.

104. Q. What was that conversation?

A. That conversation was to the effect that I was going to buy Mr. Sailer and Sam. out, and I would give him a statement, as near as I could estimate, of the position we were in.

105. Q. Was that in writing?

A. No, sir.

106. Q. What statement did you make to him at that time as to the condition of the business of the firm, and what was at that time the condition of the firm?

207 A. Well, what I supposed to be the condition of the firm at the time was that I paid Mr. Sailer $8,500 for his interest.

107. Q. That doesn't answer the question exactly. [The question was read to the witness.]

A. Well, my opinion at that time was that we had gained ground since we started business, but to what extent I could not state; we had no general settlement of the books.

108. Q. Have you now any idea, or had you at that time any definite idea, as to the condition of the assets and liabilities of the firm?

A. I had not.

109. Q. Can you now state what was the condition of the firm as to assets and liabilities at the time of your alleged purchase of Mr. Sailer's interest?

A. I don't recollect exactly, but it was on a basis of capital of about $25,000 between Sailer, Sam., and myself, not counting borrowed money from Mr. Emery.

110. Q. What were the total assets of the firm at that time?

A. I don't recollect.

110½. Q. What were the total liabilities of the firm at that time?

A. That I couldn't tell without taking the books and examining them.

111. Q. What was the basis of your offer or alleged purchase by you of Mr. Sailer's interest; what were you to give?

A. $8,500.

112. Q How did you arrive at those figures?

A. I made him an offer of what I considered his interest to be worth.

113. Q. Upon what was your opinion of the value of his interest based?

A. On the supposed surplus of $25,000 in favor of Mr. Sailer, Samuel Emery, and myself.

208 114. Q. How was that supposed surplus ascertained by you?

A. By my book-keeper, who showed me that balance in favor of the three.

115. Q. Do you mean to say that there was at that time on the books of the Emery Coal Company a balance of $25,000?

A. He said so, and I believed it.

116. Q. Did you examine the books yourself?

A. No, sir; I had not time to do it; I was too busy. I thought that ought to be the condition of the concern; it agreed with my opinion, and I bought on that basis.

117. Q. How did you pay him?

A. I gave him notes.

118. Q. In point of fact was there any such surplus at that time?

A. From subsequent developments it appears not.

119. Q. In point of fact was there any surplus whatever at that time?

A. It would be very hard to say; I don't suppose there was.

120. Q. Who was the book-keeper who gave you that statement?

A. Samuel G. Burrough.

121. Q. Where is he now?

A. I don't know. He tried to get work around town for several months, and then left town, and I don't know where he is, but I presume in Philadelphia.

122. Q. How do you account for such a discrepancy or mistake in the accounts?

A. I don't think that he understood book-keeping, to commence with; I found it out very late in time; I don't think he was a good book-keeper.

123. Q. Did you buy out Samuel Emery, jr., at the same time?

209 A. No; Mr. Sam. Emery, jr., at Mr. Albright's request, made an assignment to me, I think, in March or April, and I consummated that purchase at the same time that I did with Sailer; that is, I proposed to give him $4,000 for his interest.

124. Q. Was Mr. Samuel Emery, sr., acquainted with the details of the transaction as to the purchase of Sailer's interest by you?

A. Yes, sir.

125. Q. What information had he of it?

A. I merely told him that I was going to buy him out and pay him $8,500.

126. Q. What did he say?

A. He told me to be sure I was right before I did it.

127. Q. What reply did you make to him?

A. I don't recollect.

128. Q. Did you take any means to ascertain whether you were right before you made the purchase?

A. Yes, sir; I got my brother to make a statement of the outstanding accounts and liabilities, and I estimated the amount of coal and wood on hand and valued it.

129. Q. What arrangement at the time of the purchase of Sailer's interest was made by you with Samuel Emery, sr., or what assurance did he give you in relation to the purchase?

A. No arrangement was made and no assurance was given.

130. Q. Did you ever at any time make out a written statement of the condition of the firm of the Emery Coal Company; and, if so, what disposition did you make of it?

A. I made a statement, at the request of Langdon and Albright & Co., about the 1st of December, last year, and that statement was given to them, and they were informed at the time it was made that the net amount that was stated there to be in favor of capital account included the amount that we owed Mr. Emery, and they were also informed that the amount of stock on hand was estimated approximately.

210 131. Q. To whom was that information given?

A. I think that was given to Mr. Joseph J. Albright, in the presence of Mr. Barker, in the office in the Le Droit building.

132. Q. At what time?

A. About the time the statement was made out; I couldn't tell exactly; it was about the first of December.

133. Q. Look at Exhibit A to the original bill of complaint; is that a true copy of the original statement (handing witness the exhibit referred to)?

A. I couldn't tell from memory; I presume it is about right; that is as near as I can recollect.

134. Q. Of what was the balance in favor of capital account—$53,000—composed?

A. I think the statement there shows; it embraced the fixture account of $15,000, and the balance were book accounts.

207 A. Well, what I supposed to be the condition of the firm at the time was that I paid Mr. Sailer $8,500 for his interest.

107. Q. That doesn't answer the question exactly. [The question was read to the witness.]

A. Well, my opinion at that time was that we had gained ground since we started business, but to what extent I could not state; we had no general settlement of the books.

108. Q. Have you now any idea, or had you at that time any definite idea, as to the condition of the assets and liabilities of the firm?

A. I had not.

109. Q. Can you now state what was the condition of the firm as to assets and liabilities at the time of your alleged purchase of Mr. Sailer's interest?

A. I don't recollect exactly, but it was on a basis of capital of about $25,000 between Sailer, Sam., and myself, not counting borrowed money from Mr. Emery.

110. Q. What were the total assets of the firm at that time?

A. I don't recollect.

110½. Q. What were the total liabilities of the firm at that time?

A. That I couldn't tell without taking the books and examining them.

111. Q. What was the basis of your offer or alleged purchase by you of Mr. Sailer's interest; what were you to give?

A. $8,500.

112. Q How did you arrive at those figures?

A. I made him an offer of what I considered his interest to be worth.

113. Q. Upon what was your opinion of the value of his interest based?

A. On the supposed surplus of $25,000 in favor of Mr. Sailer, Samuel Emery, and myself.

208 114. Q. How was that supposed surplus ascertained by you?

A. By my book-keeper, who showed me that balance in favor of the three.

115. Q. Do you mean to say that there was at that time on the books of the Emery Coal Company a balance of $25,000?

A. He said so, and I believed it.

116. Q. Did you examine the books yourself?

A. No, sir; I had not time to do it; I was too busy. I thought that ought to be the condition of the concern; it agreed with my opinion, and I bought on that basis.

117. Q. How did you pay him?

A. I gave him notes.

118. Q. In point of fact was there any such surplus at that time?

A. From subsequent developments it appears not.

119. Q. In point of fact was there any surplus whatever at that time?

A. It would be very hard to say; I don't suppose there was.

120. Q. Who was the book-keeper who gave you that statement?

A. Samuel G. Burrough.

121. Q. Where is he now?

A. I don't know. He tried to get work around town for several months, and then left town, and I don't know where he is, but I presume in Philadelphia.

122. Q. How do you account for such a discrepancy or mistake in the accounts?

A. I don't think that he understood book-keeping, to commence with; I found it out very late in time; I don't think he was a good book-keeper.

123. Q. Did you buy out Samuel Emery, jr., at the same time?

209 A. No; Mr. Sam. Emery, jr., at Mr. Albright's request, made an assignment to me, I think, in March or April, and I consummated that purchase at the same time that I did with Sailer; that is, I proposed to give him $4,000 for his interest.

124. Q. Was Mr. Samuel Emery, sr., acquainted with the details of the transaction as to the purchase of Sailer's interest by you?

A. Yes, sir.

125. Q. What information had he of it?

A. I merely told him that I was going to buy him out and pay him $8,500.

126. Q. What did he say?

A. He told me to be sure I was right before I did it.

127. Q. What reply did you make to him?

A. I don't recollect.

128. Q. Did you take any means to ascertain whether you were right before you made the purchase?

A. Yes, sir; I got my brother to make a statement of the outstanding accounts and liabilities, and I estimated the amount of coal and wood on hand and valued it.

129. Q. What arrangement at the time of the purchase of Sailer's interest was made by you with Samuel Emery, sr., or what assurance did he give you in relation to the purchase?

A. No arrangement was made and no assurance was given.

130. Q. Did you ever at any time make out a written statement of the condition of the firm of the Emery Coal Company; and, if so, what disposition did you make of it?

A. I made a statement, at the request of Langdon and Albright & Co., about the 1st of December, last year, and that statement was given to them, and they were informed at the time it was made that the net amount that was stated there to be in favor of capital account included the amount that we owed Mr. Emery, and they were also informed that the amount of stock on hand was estimated approximately.

210 131. Q. To whom was that information given?

A. I think that was given to Mr. Joseph J. Albright, in the presence of Mr. Barker, in the office in the Le Droit building.

132. Q. At what time?

A. About the time the statement was made out; I couldn't tell exactly; it was about the first of December.

133. Q. Look at Exhibit A to the original bill of complaint; is that a true copy of the original statement (handing witness the exhibit referred to)?

A. I couldn't tell from memory; I presume it is about right; that is as near as I can recollect.

134. Q. Of what was the balance in favor of capital account—$53,000—composed?

A. I think the statement there shows; it embraced the fixture account of $15,000, and the balance were book accounts.

135 Q. Did it include the amount due Mr. Emery?

A. Yes, sir.

136. Q. How much was that?

A. I don't recollect exactly at this time.

137. Q. State as near as you can of what the capital account consisted at that time.

A. I cannot make a statement; that is, I couldn't come within $2,000 of it, and it is hardly worth while to make a statement of that kind.

138. Q. In this, however, there was reckoned as part of the capital account what you owed Mr. Emery, was there not?

A. Merely to show the amount of money that we had the use of at the time, that was all; Mr. Albright was perfectly well aware all the time that we owed Mr. Emery the money.

139. Q. How do you know that?

A. I told him so before we started business—when we borrowed from Mr. Emery to conduct the business with.

211 140. Q. Upon what occasion was that statement made?

A. That statement was made, I think, in February, 1875, before we went into business at all; the same statement was made to every man that I called upon in Philadelphia, and Mr. Albright was over there with me—the Maryland Coal Co., of New York, and others.

141. Q. Why did you put here as part of the balance in favor of the capital account a debt due from the firm to some other person?

A. It would have been strictly incorrect if there had not been an explanation accompanying it; upon the face of it it is correct.

142. Q. What was it?

A. I don't recollect what it was at that time; take the amount that we owed Mr. Emery at that time from that and you will have about the amount that I think was in the business at that time.

143. Q. What was the condition of the business on the 1st of July, 1877?

A. We had no statement made out at that time, but we *we* were trying to get one, and we accomplished that about the middle of the month—I think on the 15th or 16th; and on the basis of that statement, which was made up to the 1st of July, we made the assignment.

144. Q. From your present knowledge of the business of the concern what was its condition on the 1st of July, 1877?

A. I presume the concern was insolvent on the 1st of July, 1877.

145. Q. What did you know on the 1st of July, 1877, as to the condition of the firm on that day?

A. I only knew that we were pressed for money.

146. Q. In what way were you pressed, and how long had the pressure continued at that time?

A. We had been pressed for the past thirty or sixty days.

147. Q. You mean prior to the 1st of July?

212 A. Yes, sir.

148. Q. Do you mean that you had been pressed to meet your paper?

A. Yes; to meet our paper.

149. Q. What was the condition of your stock on hand at that time?

A. On the first of July? I do not recollect exactly.

150. Q. State approximately.

A. I do not think I could give it even approximately.

151. Q. Was it larger or smaller than it was on the first of January, 1877?

A. Oh, much smaller.

152. Q. What proportion?

A. Not half.

153. Q. Had it been steadily decreasing since the first of January?

A. Yes, sir; since the first of January the stock had decreased; it generally does with all dealers in coal.

154. Q. What stock had you on hand in May and June, 1877?

A. I do not recollect.

155. Q. Have you any idea?

A. I should judge somewhere from four to five thousand tons of all kinds.

156. Q. How does that compare with what you had on the 1st of January?

A. I think on the 1st of January we must have had 11 or 12 thousand tons—may be 13 thousand.

157. Q. On the first of May it was about half of what it was in January?

A. Yes, sir; less than half.

158. Q. What was the ratio of decrease between May and the 1st of July?

A. I could not state.

159. Q. State approximately.

213 A. I do not think I can make any kind of a statement upon that; it was smaller, but I cannot say how much; most of the stock on hand on the 1st of July was sold for delivery, and I suppose, really speaking, there was almost no coal on the wharf belonging to the concern.

160. Q. In view of the state of facts which you have just described, did you suppose, on the first of July, 1877, that you were in a solvent condition?

A. I did not.

161. Q. You knew that the company was seriously crippled and embarrassed?

A. No; I did not know that we were seriously crippled and embarrassed; I knew that we were embarrassed, but I did not know that it was serious.

162. Q. When did you proceed to make a careful examination into your condition?

A. We had our book-keeper at work for the first two weeks of the month, and I used to go to the wharf on Sundays to help him as much as I could; and on the third Sunday in July he returned me a statement which, upon examination, I found seriously incorrect; I knew that it was wrong, and sent it back to him, and on the following Tuesday I had the statement corrected as far as could be.

163. Q. What was the statement?

A. I do not recollect exactly, but it was the statement that we handed to Ross and Dean on Wednesday, I think, at the same time we made the assignment.

164. Q. What day of the month was it when you made the assignment?

A. I do not recollect exactly, but I think it was the 18th; it was Wednesday, I know.

165. Q. What conversation did you have with Mr. Emory on or after the 1st of July?

WITNESS. Do you mean on business?

Mr. WILSON. Yes.

A. We had no conversation until that Sunday that I found these errors in the accounts, and I so stated to him at his house—that we
214 found some errors in balance sheet, and that we would have to look right into matters and see just exactly what was up.

166. Q. How much did the firm owe Mr. Emery on the 1st of July on the books of the firm?

A. We owed him somewhere about $10,000 or $11,000, I guess, and then we had exchanged paper with him to the extent of the neighborhood of $8,000.

167. Q. You owed him at that time, then, about $18,000?

A. I think so.

By Mr. DEAN:

168. Q. That is provided you did not pay these notes?

A. Yes, sir.

By Mr. WILSON:

169. Q. After the 1st of July what, if any, settlement was made with Mr. Emery?

A. There was a settlement made after the 1st of July, and I think the receipts were passed on the 10th.

170. Q. Will you examine the memorandum now shown you, and state if the same is in your handwriting?

A. The same is in my handwriting; yes; I do not recollect what it is or when it was taken.

Mr. Wilson here offers in evidence the paper referred to, and it is appended to the testimony and marked "L., A. & Co. No. 14."

Being wtitten in pencil, however, it is here transcribed into the testimony, as follows:

| | | | |
|---|---|---|---|
| Accounts and bills R | | | $35,000 |
| Bad | | | 3,000 |
| | | | $32,000 |
| Fixtures | | 22,000 | |
| Less 20 per cent | | 3,400 | |
| | | 17,600 | 17,600 |
| $1,400 | Tons, 5,500 | | |
| | 3 50 | | |
| | Coal, 2,250 00 | | |
| | 13,500 | | 15,000 |
| Wood | | | 1,000 |
| $5,000 | | | |

215 171. Q. What was done by you with that paper, Exhibit No. 14?

A. I have no recollection of that paper at all.

172. Q. Suppose you were told that it was handed by you to Mr. Barker on the 16th of June, 1877?

A. It is just barely possible that that is my estimate of our condition at that time; very likely it is, because that is about my opinion of what I thought at that time.

173. Q. When did your opinion change?

A. It changed after the middle of July, when I got the corrected statement from my brother.

174. Q. What do the figures $5,000 on the paper just shown you refer to?

A. I could not tell you; those figures are not in my handwriting.

175. Q. What do the other figures refer to?

A. They are approximate amounts estimating the amount in the business.

176. Q. You stated the amount of bills receivable at $35,000?

A. Yes, sir; and my brother gave me a similar statement to that on the 1st of July or the middle of July; it was the first statement that he gave me during the month, showing us to have something like $30,000 or $32,000.

177. Q. The fixtures are stated at $22,000?

A. Yes, sir; that is about what they cost.

178. Q. And forty-five hundred tons of coal, which you estimate at $3.50 a ton, part of the assets of the concern, making $15,000. What real estate did you own at that time?

A. A house on Capitol Hill.

179. Q. Valued at what?

A. The net amount was about fifteen hundred or two thousand dollars.

180. Q. Over and above incumbrances?

A. Yes, sir; that is my estimate.

216 181. Q. What was the incumbrance?

A. Twenty-seven hundred dollars.

182. Q. What knowledge did you communicate to Mr. Emery, senior, as to your being hard pressed for money about the first of July?

A. Before the 1st of July two accommodation notes of his came due, and we were unable to take them up at the time, and we renewed them, and so stated to him at the time that we were not able to take them up.

183. Q. Did you tell him why you were unable to take them up?

A. We told him that we did not have the money to do it; we were not able to do it at the time.

184. Q. Did he make any inquiry at the time into your condition?

A. No, sir.

185. Q. Did he examine the books?

A. Not that I know of; he might have done it, but I do not know that he did.

186. Q. Did you represent to him at that time that you were perfectly solvent and able to take care of the notes?

A. I told him I thought we were, if he asked any such question; I do not know that he did.

187. Q. Had he any knowledge of the amount of coal on hand?

A. No more than I had; we could not do anything but guess at it if we went down to look at it; it is very hard to estimate the amount of coal in a pile.

188. Q. On what day was it that you discovered the mistake in the figures of your book-keeper?

A. It was on the third Sunday of July that I found the errors in his statement.

189. Q. What was the occasion of his making out the accounts?

A. When we put up the improvements on the wharf we got
217 about a thousand dollars' worth of work done by Petit and Dripps, and they were to take that amount out in coal; instead of crediting their account and showing the balance in their favor, he placed the whole of that amount amongst our assets; he also made that mistake in reference to Mr. Samuel Emery's account, and one or two others that involved a considerable amount of money.

190. Q. What was the account that he was making out?

A. He was taking a balance-sheet of the amounts of money due to the Emery Coal Company; it just threw us $17,000 out of the way, I think, by his statement.

191. Q. Have you a copy of that statement?

A. I have not; the corrected copy was given to Mr. Dean; I do not know what became of that statement; the corrected statement was made on the Tuesday following the third Sunday in July, and it was brought to my house, I think, on Tuesday night.

192. Q. Where did you make that discovery?

A. I do not recollect; I am not sure whether it was at the office or after I had left the office with the statement.

193. Q. What did you do when you made the discovery?

A. I think I went home to dinner, or I was on my way home, I am not sure which, and I went down to Mr. Emery's that Sunday night and told him there was an error.

194. Q. Are you sure it was on Sunday night?

A. I think it was.

195. Q. What did you tell him?

A. That there was an error in the account. In the first place, the book-keeper had left out a lot of paper at the Second National Bank and some at the Metropolitan Bank for collection, and he had omitted accounts of one kind and another, amounting to I don't recollect how much, but the errors were material. I told Mr. Emery that there were those errors in there, and we would have to make a very close examination to see where we were.

218 196. Q. Did you tell him anything about your condition generally? Did you tell him what the result was or what you thought it would be?

A. No, I did not know; I could not tell at that time.

197. Q. What was the state of the accounts after the corrections were made?

A. The state of the accounts showed that we could not pay one hundred cents on the dollar.

198. Q. When was that correction made?

A. I think the correction was finished on Tuesday evening; that is my recollection.

199. Q. It was on Sunday that you discovered the mistake?

A. Monday and Tuesday, I think, he made the corrections; if Sunday was the 15th, it must have been the 16th and 17th.

200. Q. When did you make your assignment?

A. On the Wednesday following, the 18th.

201. Q. When did you first submit the statement and take the advice of counsel?

A. We consulted Ross and Dean; I forget whether it was Monday or Tuesday.

202. Q. Which was it, as nearly as you can remember?

A. It was either one of these two days; I do not recollect which.

203. Q. Did you consult them before you knew what the account would be after corrections were made?

A. Yes, sir; we went before that statement was made, I guess—before it was completed.

204. Q. On Monday?

A. I do not know whether it was on Monday; I do not think the statement was completed until Tuesday night; I think it was brought to my house on Tuesday night.

205. Q. When you saw Mr. Emery on Sunday, what statement did you make in regard to your affairs?

A. I did not make any that I know of, except——

206. Q. Did you offer to make an assignment to him?

219 A. Not at that time, nor at any time.

207. Q. Did you offer to make any transfer of any of your property to him?

A. Not at that time; no, sir; when I bought Mr. Sailer out, I told Mr. Emery if he would indorse Mr. Sailer's notes we would give him a deed of trust on the fixtures to secure him; that is my recollection of it.

208. Q. What did he say?

A. He did not accept the proposition.

209. Q. Did you not propose to Mr. Emery to make an assignment to him, and did he not decline, on Sunday?

A. No, sir; not that I recollect; I do not have any recollection of any such conversation taking place.

210. Q. When did you next see him after the visit on Sunday?

A. On Monday or Tuesday; I do not recollect which.

211. Q. For what purpose?

A. It was either Monday or Tuesday that I went to see if some notes that had been lost had been returned to him; I don't recollect now which day it was; the notes were lost, I think, on the 13th of July, or 12th.

212. Q. What day was that?

A. It was Thursday or Friday; I am not sure whether it was Thursday or Friday that they were lost.

215. Q. Did you have them immediately advertised?

A. They were advertised the day after, I guess.

214. Q. Did you have the advertisement put in?

A. Yes; I had it put in; I had the notes in my pocket, and was taking them to him at the time they were lost.

213. Q. You went to see him on the 16th or 17th, Monday or Tuesday?
A. Yes, sir.
216. Q. For what purpose?
A. To see if the notes had been returned.
217. Q. Had they been returned?
A. They were there; he had received them, I believe.
220 218. Q. Any others?
The WITNESS. Any other what?
219. Q. Were there any other notes except those that you had intended to give him?
A. I don't recollect about that, whether there were or not.
220. Q. Before you went to see him had you conferred with counsel and drawn up an assignment?
A. Not that I know of; I think the assignment was drawn up Wednesday morning or afternoon; that is the best of my recollection.
221. Q. When did you first resolve to make an assignment?
A. The resolution to make the assignment was made while we were in Ross and Dean's office, just before they wrote off the paper.
222. Q. When did you first go to see them, as near as you can state?
A. I don't recollect; it was either on Monday or Tuesday.
223. Q. Did you not, on Monday, direct them to prepare an assignment?
A. No, sir; not to my recollection.
224. Q. Did you on Tuesday?
A. No, sir; I don't think I did on Tuesday; in fact, I am sure of it.
225. Q. What knowledge had you of your condition on Tuesday, which you had not on Monday?
A. We had a partial statement that was finished and brought to the house, as I said, on Tuesday night by my brother.
226. Q. Did you not make any examination of the books yourself after discovering the discrepancies?
A. No, sir; I never went over them from the time the books were kept by my brother.
227. Q. Was Mr. Samuel Emery, jr., in town on Sunday or Monday before the assignment was made?
221 A. That I could not say; I think he was at Mr. Emery's (senior) on Sunday night, but I am not sure; I think that I was to have met him there on Sunday night.
228. Q. By appointment with him?
A. By appointment.
229. Q. With his father?
A. His father had nothing to do with it.
230. Q. What was the occasion for that?
A. I had bought out Mr. Emery, jr., and he went away to the Black Hills and came back again, and wished to annul all his previous action; that is what brought us there together that night.
231. Q. Did you have any paper mature on Saturday before the Sunday that you speak of?
A. I don't recollect; I think there was some paper due on Monday.
232. Q. Was a check for $375 due about that time?
A. A check was given; I don't recollect the date of the check.

233. Q. About what date was it; before Sunday or after?

A. It was before, I think; the date must have been two or three days before Sunday.

234. Q. And you could not pay it?

A. I thought the check was paid, and I think now we had money enough in bank to pay it; I think the check must have missed its payment by a note of Crossman's being charged up against us; I think the Crossman note was charged up against the account; I thought the amount was there.

235. Q. What date was it when it was charged?

A. I don't know.

236. Q. There was some difficulty about the check, was there not, and a demand made for it?

The WITNESS. The protested check?

Mr. WILSON. Yes.

222 A. I think Mr. Barker came to the house on Monday evening and asked about the check, and I think I told him that I thought the money was there.

237. Q. Was it not on Saturday that Mr. Barker came?

A. I cannot say positively; it might have been Saturday.

238. Q. What did you tell him then?

A. I told him that I thought the money was there to pay it.

239. Q. Did you not tell him anything about the condition of the firm at that time?

A. I don't think that I did.

240. Q. Did you not say to him that you could not pay?

A. No; I don't think I did. I could not say positively, but I don't think I made use of any such expression.

241. Q. Where did you see him at that time?

A. I think I saw him on Saturday evening; he came to my house on Pennsylvania avenue.

242. Q. What time?

A. I could not say; somewhere between 7 and 8 o'clock or 9.

243. Q. What did he say?

A. I don't recollect anything at all except his mentioning the check.

244. Q, What did he say about the check?

A. He was surprised that it wasn't paid, and wanted an explanation.

245. Q. What did you say to him?

A. I have repeated it—that I thought the money was in bank to pay that check.

246. Q. Is that all you recollect?

A. That is all I recollect at this time.

247. Q. Were there any notes from you to Langdon, Albright & Co. about to mature?

A. Yes, sir; there was a note due in a few days after Mr. Barker was there; I don't recollect the date of it exactly.

223 248. Did you at that time say anything about that note?

A. I don't recollect now.

249. Q. Examine this paper which I now hand you and state if it is in your handwriting.

A. That is in my handwriting.

250. Q. Read it, if you please.

A. It is as follows:

WASHINGTON, *July* 16, 1877.

LANGDON, ALBRIGHT & Co.:

GENTLEMEN: I cannot do anything on note due to-day; Mr. S. Emery, sr., was out of town all day yesterday, and am unable to announce anything except we have over $40,000 to pay $25,000 to you and Mr. S. Emery, and Sailer, I suppose, will get what is left if we stop; as soon as I can see Mr. S. Emery, jr., I will announce our decision.

E. E. BURROUGH.

(Mr. Wilson here offers the above paper in evidence, and it is appended to the testimony and marked "Exhibit L., A. & Co. No. 15.")

251. Q. To what did the $40,000 refer in that letter?

A. To my brother's statement of $29,000 of accounts and bills due us, and $22,000 worth of fixtures.

252. Q. One day previous to the date of that letter you had discovered, however, the mistakes in his statements, had you not?

A. Yes, sir; I also estimated for a small amount of coal on hand as belonging to us in that statement or memorandum.

253. Q. At the time that you wrote that letter, what provision had you made to secure your indebtedness to Samuel Emery, sr.?

A. The only provision that was made to secure him for any indebtedness was a collateral given to secure a note for $4,750, given as a renewal on the 21st of June, I think.

254. Q. When was that collateral given to him? State that transaction fully.

224 A. I was confined to the house about the 20th of June, and paper of Mr. Emery's came due on the 21st for money that we had borrowed from him and the proceeds that had gone to pay Langdon, Albright & Co.'s paper before. I sent for him and got him to come down to the house and go to the Metropolitan Bank and renew the notes, one of them for $2,500, which was afterwards paid, and the other one for $4,750, which he had to take up, and I offered to secure him by transferring to him an account due us from the House of Representatives, amounting to about that much money, but afterwards I drew that money and gave him certain accounts that we had on the books—notes that would be settled about the first of July—some that we already had on hand.

255. Q. When did you give him those notes?

A. I can't recollect; but I was going to give them to him on the 13th of July, when I lost the pocket-book—that is, a portion of them; I don't recollect exactly which of them. I believe he had that note of the Mineral Springs Co. on hand at the time, and the others, I believe, were in the pocket-book. After I lost the pocket-book I had all the notes duplicated, and gave them to him, I believe, on Saturday, with the exception of the note of the Washington Brick Machine Co. for $1,318.59.

256. Q. When was that given to him?

A. That he received on Monday or Tuesday morning, when the pocket-book was found. I don't recollect the morning exactly when it was returned.

257. Q. When did you put these notes in your pocket-book?

A. That I could not recollect, I don't think. Do you mean when did I receive them, or when did I get them from the office, or what?

258. Q. When did you receive them? When did they first come into your possession, and when did you first put them into your pocket-book?

225 A. I think on Thursday afternoon; I had them on Thursday afternoon.

259. Q. Where were they?

A. Part of them were in the pocket-book at the office, and part of them I had gotten, I guess, that day; I am not sure about that.

260. Q. What other notes were there in the pocket-book?

A. I don't recollect any of them.

261. Q. State, as near as you can, what notes there were.

A. There was a note of about $180 of William H. Baum; one of about $360 of R. A. Andrews or R. H. Andrews, I am not sure which, to the order of Thomas K. Gray; two notes of R. McDonald, aggregating about $600; one of Thwing & Hitchcock, $121, and one of R. Collins, $500.

262. Q. Had not some of these notes been in your possession some days prior to the 13th of July?

A. It is possible they had; I could not say.

263. Q. Why were they not delivered sooner to Mr. Emery?

A. Because I could not always see Mr. Emery.

264. Q. Had you made any effort to see him?

A. I cannot say that I had specially before that time.

265. Q. Had not some of those notes been in your possession for a week or ten days or two weeks prior to the 13th of July?

A. I don't know; it is possible, but I think not.

266. Q. Why were those notes not given to Mr. Emery, sr., as soon as you got them?

A. Because I didn't happen to see him.

267. Q. When you gave the check for $375 did you request Langdon, Albright & Co. to hold it?

A. Yes, sir; for a few days.

268. Q. At the time you made that request had you any of these notes in your possession?

226 A. I think likely.

269. Q. Was not that check presented for payment more than once?

A. That I do not know.

270. Q. Will you examine this paper now shown you, and state if it is in your handwriting?

A. That is in my handwriting; yes.

Mr. Wilson here offers the paper in evidence, and it is appended to the testimony and marked "Exhibit L., A. & Co. No. 16," and is as follows:

LANGDON, ALBRIGHT & CO.:

GENTLEMEN: We have a very heavy customer—one engaged in transporting U. S. mails—and I was engaged yesterday, and will be to-day, in

trying to keep up their supply of coal; to-morrow morning I will make an appointment to meet you, and will have an inventory of our stock, fixtures, &c., and we can have a talk.

E. E. BURROUGH.

271. Q. I see a memorandum upon this in regard to the date when it was written; when was it written?

A. I think on the morning of the 17th.

272. Q. In that letter you state that "to-morrow morning I will make an appointment to meet you, and will have an inventory of our stock, fixtures, &c.?"

A. I guess that was written before I was at Ross & Dean's.

273. Q. Was it written before you were at Ross & Dean's?

A. I think so; I had had no conversation with them; I don't think I had at the time that was written.

274. Q. Was that written before or after Mr. Emery had received those notes as collateral?

A. Well, I am not certain, but I think those notes were in his possession the night previous.

275. Q. Do you know how they came into his possession?

227 A. I do not; I know they were left somewhere, either at his house or office.

276. Q. By whom?

A. That I don't know.

277. Q. Did you ever get the pocket-book again?

A. Yes, sir.

278. Q. Have you got it now?

A. Yes, sir.

279. Q. Is it in your possession?

A. Yes, sir.

280. Q. Let us see it.

(Witness produces it and hands it to Mr. Wilson.)

281. Q. What did it contain besides collateral securities at the time it was lost?

A. It contained a memorandum-book.

282. Q. Of what?

A. I don't know; any papers that happened to be in it; I could not tell you what.

283. Q. Did he return it to you?

A. No; I think it was lying on his table when I went in his house.

284. Q. Were the notes in it?

A. Yes, sir; I think they were; I don't recollect exactly whether he had taken them out or not; I could not say about that.

285. Q. What is your best recollection?

A. My recollection is that I took them out and gave them to him, but I would not be sure about that.

286. Q. At what time?

A. In the morning that this book was found; on the morning, at least, that I got it at his house.

287. Q. What morning was that?

A. I cannot say positively; it was either Monday or Tuesday; I think Monday.

288. Q. What makes you think Monday?

228 A. Well, from a conversation of his to the effect that the party that found it stated that he saw the advertisement for it in the Saturday afternoon Star; Mr. Emery mentioned that to me, and that is the only thing that I can go by.

289. Q. What papers did you order it to be advertised in?

A. The Republican and Star.

290. Q. Did you take it there yourself?

A. No, sir; I got Mr. AtLee to take it.

291. Q. You did not take it to either paper?

A. No, sir.

292. Q. Who drew it?

A. Mr. AtLee himself, I guess, in his office.

293. Q. When was that done?

A. The same evening that the pocket-book was lost.

294. Q. What day was that?

A. The 13th, I believe; I could not recollect that only by referring to the advertisement; I think it was stated in the advertisement when it was lost.

295. Q. What time in the evening?

A. 8 or 9 o'clock.

296. Q. Then it did not appear until Saturday's Star?

A. That is my recollection; I don't know.

297. Q. When did you first hear that the pocket-book was found?

A. I don't know; I don't recollect; I don't think I knew anything about it until I came to Mr. Emery's house on the morning that we got it, whatever morning it was.

298. Q. Did you see him at any time between the time you lost the pocket-book and that morning?

A. Yes, sir; I saw him on the Saturday previous, and gave him several notes that were duplicated.

299. Q. You gave him all the notes?

A. All except the Washington Brick Machine Company's note.

229 300. Q. Did you see him at *at* any other time?

A. I saw him that Sunday night that I was at his house.

301. Q. At which time you told him of the discovery of the mistakes?

A. Of the errors in the balance-sheets; yes, sir.

302. Q. What was the object of that information? Why did you tell him?

A. I told him that because I wanted to tell him so; I wanted him to know; I told him at the same time that it would be necessary to discharge my brother; that I could not keep a man of that kind around; my wife and I visited Mr. Emery there on Sunday night together, and I had an appointment to meet young Sam. there.

303. Q. You discovered that, and that was on Sunday?

A. Sunday before dinner.

304. Q. But after that you kept your brother there, did you not?

A. I kept him there to finish up his work and straighten things out.

305. Q. And you entrusted the whole preparation of the statement to him, did you not?

A. Yes, sir.

306. Q. And you made no examination of the books yourself?

A. No, sir; I didn't have any opportunity; I had made the assignment before; if I had continued the business I should have.

307. Q. At that interview you told Mr. Emery it would be necessary to discharge your brother after discovering those serious mistakes that he had made, and yet you kept him there to make the final account and settlement, and you yourself made no examination of the books for the purpose of ascertaining whether what he told you was correct or not; is that so?

A. Yes, sir; that is so; the errors of my brother were not errors of incompetence but of carelessness.

230 308. Q. Did you feel no desire to know the exact situation of your affairs?

A. Yes, sir.

309. Q. Then why did you not make a personal examination, if you had a person in your employ whom you could not trust?

A. I had other things to attend to besides attending to those books, and I didn't have time to do that and comply with other engagements at the time.

310. Q. How could you make a statement to Albright & Co. that you had $40,000 with which to pay $25,000, depending upon your brother's representations and statements to you, after you had discovered these serious mistakes in his accounts?

A. I made a large allowance on that basis there; a large deduction from his statement to cover his mistakes that I had seen in his statement.

311. Q. And after making all that allowance you had $40,000 with which to pay $25,000 of debts?

A. I think so; the statement that we handed Ross & Dean showed that there was about that much on our appraisement.

312. Q. That statement I would like to have. When was that statement given to them?

A. It was given to them on Tuesday afternoon, I think. I don't recollect whether it was Tuesday afternoon or Wednesday morning that I was in there; it is very hard to state the time exactly.

313. Q. Who were with you on your first visit to the office of Ross & Dean?

A. Mr. Samuel Emery, jr., Mr. Samuel Emery, sr., and I am not sure whether Mr. Sailer was along or not; I think he was there, but I am not sure about that.

314. Q. What time of the day was that?

A. About noon, I guess.

315. Q. How long were you there?

A. Probably 20 or 30 minutes. I went over and asked them

231 if they would serve as assignees in case we made an assignment.

316. Q. At that time did you present them a statement of account?

A. We made a verbal statement of it—about as we thought our affairs were.

317. Q. What day that was you do not know?

A. I could not say positively, but I think it was Tuesday; as far as I am concerned I could not come any nearer than that.

318. Q. At the time you went there had Mr. Emery received these collateral notes?

A. Yes, sir; Mr. Emery had the collateral notes in his office.

319. Q. You are sure of that?

A. I feel sure of it.

320. Q. How do you know it?

A. Well, that is my recollection of it; I cannot say anything more about it than that; there is still a bare possibility that I may be mistaken, but that is all I can recollect.

321. Q. You went away after a half hour's interview?

A. It was a short interview; we had only a short conversation.

322. Q. When did you go again?

A. I went on Wednesday.

323. Q. You did not go again till Wednesday?

A. I don't think I went again until we made the assignment.

324. Q. You were there only twice, then?

A. That is all I recollect of being there on that business.

325. Q. And the second time was the day after you went there the first time, was it?

A. I believe it was; that is what I recollect, but I could not say that positively.

232 326. Q. It might have been Monday, might it not?

A. Monday might have been the first day I was there: if it was before, I think I was not there until Wednesday, but I was there twice on that business.

327. When did you sign the papers—what time of the day on Wednesday?

A. In the afternoon, I believe.

328. Q. At that meeting on Sunday night when you saw Mr. Emery, who was there?

A. Mr. Emery, his wife, my wife, and myself.

329. Q. And that is all?

A. That is all.

330. Q. You had an appointment, you say, with Sam. Emery, jr.

A. Yes, sir.

331. Q. But he was absent?

A. Yes, sir; he was absent.

331½. Q. Where was he?

A. I don't know.

332. Q. When did he come home?

A. That I couldn't tell you.

333. Q. When did you next see him?

A. I don't recollect that; it was either Monday or Tuesday.

334. Q. You have spoken of the firm of Burrough & Co., in Baltimore; that Mr. Burrough is your father?

A. Yes, sir.

335. Q. What were the relations between the Emery Coal Co. and that firm there?

A. The last part of last year I loaned father a few hundred dollars of my own, which was returned; during all of this year, on or about the 20th of each month, I borrowed money from him, the amounts ranging from

$300 to $600 at a time, which was returned on or before the 6th of the following month by check.

336. Q. Those transactions all appear on the books?

233 A. No, sir; none of our borrowed money accounts are on the books of any one; there is no account of any exchange of paper or anything of the kind.

337. Q. What, if any, money was paid to your father after the first of July?

A. I don't recollect; none, I guess.

338. Q. What was received from him?

A. I couldn't tell without seeing the books.

339. Q. What, if any, paper was transferred to him?

A. None, excepting the small notes given him in June, I think, or along there somewhere.

340. Q. I wish you would refresh your recollection so as to be able to state just the sums that were borrowed from your father, and how they were repaid.

A. It would be hard to do so without going to Baltimore and getting his books, or going over the books of the Emery Coal Co.; the check-books I could state something from, and that is about all.

341. Q. Have you any papers, statements, or agreements executed by him, or anybody for him?

A. I have no papers, statements, or agreements executed by him to anybody.

342. Q. Or any notes or other securities endorsed to him?

A. No. sir; I have none; there were two small notes that were given to him which were paid, aggregating a few hundred dollars only.

343. Q. Was any assignment made to secure him?

A. No, sir.

344. Q. Or anybody for him?

A. No, sir.

345. Q. For any money that you had borrowed?

A. No, sir.

346. Q. Or for any coal sold?

A. No, sir.

347. Q. Or for any coal sent to him?

A. No, sir.

234 348. Q. How does the account now stand between you and him?

A. I think I owe him $80 or $90.

349. Q. How is that shown?

A. It is a private debt.

Adjourned to 2 o'clock p. m. Monday, October 22d, 1877.

OCTOBER 22, 1877.

Continuation of direct examination of Edward E. Burrough:

350. Q. Produce, if you please, the original assignment, dated 18th of July, 1877, from you to Messrs. Ross & Dean, assignees.

A. I produce said assignment.

(Mr. Wilson here offers the said original assignment in evidence, and it is appended to the evidence and marked "Exhibit L., A. & Co. No. 17.")

351. Q. In whose handwriting is it?

A. Mr. Dean's, I guess.

352. Q. In whose handwriting is the schedule attached?

A. Mr. Samuel G. Burrough's, all but the last two items and the words "Exhibit A" at the top of the page, which are in the handwriting of Mr. Dean.

353. Q. When was it made out?

A. I think it was made out on the day it was signed—the 18th of July, 1877.

354. Q. When did it first come into your possession?

A. I don't know that I can say that it ever was in my possession.

Adjourned to 2 o'clock p. m. Wednesday, October 24, 1877.

235 OCTOBER 29, 1877.

Continuation of direct examination of E. E. Burrough:

By Mr. WILSON:

355. Q. What was the basis of your offer to Mr. Sailer for his interest, and how did you arrive at the value of his interest?

A. I never arrived exactly at the value of his interest; I was anxious to buy him out, and I made him an offer which he accepted; I arrived at it as nearly as I could approximately.

356. Q. What statement did you obtain in order to arrive at it approximately?

A. I estimated the coal on the wharf—what I thought was there.

357. Q. How much was there?

A. I do not know now; I asked my brother how many outstanding accounts we had, and what our liabilities were, and took the difference and divided it up.

358. Q. Do you remember of any statement having been made in December, 1876, of your purchases and expenditures (handing book to witness)?

A. No; these were not made at that time.

359. Q. To what book do you refer?

A. I refer to page 40 of the ordinary blotter; it has been an inventory of stock; none of this page was made at the time you speak of; I do not know when it was done, for I never saw it before in my life.

360. Q. In whose handwriting is it?

A. My brother's; I did not know it was there, and I do not know when it was put there; I never knew there was any such thing in there.

361. Q. Did you ever see that book before?

A. Oh, yes, sir; the first entries in that book were made by myself.

236 362. Q. Was any similar statement, or one of like purport, with that on page 40 made in December, 1876?

A. Not to my knowledge, and I do not think that was made then.

363. Q. What is your reason for thinking it was not made then?

A. Because at the time I know that the books were not in a condition to be got up; they could not be got up exactly in December, 1876.

364. Q. What does that statement purport to be?

(Question objected to by Mr. Dean, and the witness is instructed that the book speaks for itself.)

A. I do not know what it is; I do not know where these entries came from.

365. Q. Do you know what your sales were up to that time?

A. I do not.

366. Q. Can you state now approximately how much they were?

A. I cannot.

367. Q. Do you know what your expenses were for that time?

A. That I do not know.

368. Q. Do you know how much you had drawn out from the firm at that time?

A. I presume I had drawn out in the neighborhood of $1,400 or $1,500.

369. Q. That is, between April, 1876, and December, 1876?

A. Yes, sir.

370. Q. Any more than that?

A. I do not think I had.

371. Q. How much had you drawn out in the aggregate prior to the assignment?

A. I do not recollect that; about $3,000, not counting the house on Capitol Hill.

237 372. Q. What was that?

A. That was about $1,100; Mr. Samuel Emery, jr., ran his pen through that entry on the ledger; I don't know whether it stands charged to me or not.

373. Q. How was it obtained?

A. We exchanged the A street coal-yard for it; Mr. Samuel Emery, jr., bought the yard on A street with a view to attend to it; he failed to attend to it; and after keeping it six or seven months I traded it off for this house on the corner of Seventh and A streets southeast.

374. Q. Where is your brother who kept these books?

A. I don't know; I presume he is in Philadelphia.

375. Q. What is his address?

A. That I don't know; I haven't got it.

376. Q. When did you hear from him last?

A. I haven't heard from him since he went away from here; he went away from here either the forepart of this month or the last of last month. I should address him at the Philadelphia post-office.

377. Q. What business is he engaged in there?

A. I don't know that he is in any; he tried to get something to do here, but could not, and went over there to try to get something to do.

378. Q. He is in Philadelphia, but you do not know his present whereabouts?

A. The best way to address him would be at the Union Line Railroad Richmond Depot.

379. Q. Can you give the name of any person in Philadelphia or in Washington who would probably know where he is?

A. That I could not do; I don't know anybody in Washington that knows anything more about him than I do.

380. Q. From the entries on this book it appears, does it not, that the purchases of merchandise up to December, 1876, from the 1st of April, amounted to $170,000?

238 A. I couldn't tell; I suppose that is correct, but I do not know anything about it. After finding the way my brother attended to his books down there I wouldn't want to answer from this thing now.

381. Q. I do not ask you to answer what the fact is, but only how it appears on the book.

A. I do not know anything about how correct this statement on page 40 is.

382. Q. What does it show?

A. I do not know whether they are purchases or sales, and I don't know where he got his items from at all; it looks to me as though they are sales, but I could not tell.

383. Q. What is the lower column; it seems to be expenses, does it not?

A. The expense account here looks like part of the expense account and part of the fixture account and small items; and then there must be other items besides; I don't know where that came from at all, or where it is made up from.

384. Q. Do you think your expense account, and fixture account, &c., for the time mentioned amounted to as much as is there stated—$20,000?

A. I don't think our expenses were so much; no, sir.

385. Q. Have you any knowledge on the subject?

A. No; I couldn't give anything definite.

386. Q. You have stated that from time to time you borrowed moneys from Burrough & Co., in Baltimore. What is the aggregate of the sums so borrowed?

A. I don't know, but I could approximate.

387. Q. Please approximate to it.

A. It must be something in the neighborhood of $5,000; I suppose $4,000 to $5,000.

388. Q. How did the transaction with Burrough & Co. appear on the books?

A. It does not appear at all; when I borrowed money from my father I gave him a check and took his check, and dated my check ahead.

239 389. What was done with the money?

A. It was deposited to the credit of the Emery Coal Company.

390. Q. Was any security given at all?

A. No, sir.

391. Q. When was the first money borrowed of him?

A. I loaned him, I guess, before I borrowed from him; I think I loaned him money in October or November of last year.

392. Q. How much?

A. I don't recollect the exact amount; I think I loaned him at one time $300 or $400, and at another time $700 or $800; I think the $700 was in December; somewhere from the 6th to the 12th, I think.

393. Q. Was any money borrowed by the Emery Coal Company from Samuel Emery, sr.?

A. Yes, sir.

394. Q. What amount?

A. I don't recollect the exact amounts; one time as high as $4,000, and a few other small amounts that I don't recollect.

395. Q. Was that $4,000 all borrowed at one time?

A. Yes, sir; $4,000 borrowed in one day, I think.

396. Q. What evidence is there of these loans, except the checks given by you?

A. None.

397. Q. Did you at any time after April, 1876, own any real or personal property in Baltimore in which Burrough & Co. were concerned, either directly or indirectly?

A. No, sir.

398. Q. Did you, after the 1st of April, 1876, enter into any agreement or make any assignment or transfer of any kind to Burrough & Co.?

A. No, sir.

399. Q. When was the last payment of money made by you to Burrough & Co.?

240 A. I think that I borrowed money from them about the 20th of June, and returned it in July.

400. Q. How much was that?

A. I don't recollect the amount; I think it was $500 or $600—possibly $400.

401. Q. How did you pay them?

A. By check; I took his check when I got the money, when I made the arrangement, and gave a check when it was to be returned—the day when he wanted to use it.

402. Q. Examine this check for $402, dated July 5, 1877, in favor of Burrough & Co., and state whether that is one of the checks.

A. That is one of the checks.

403. Q. What was that for?

A. Return of loan of money I borrowed from them the last of June. This check was written in June.

404. Q. And dated the 5th of July?

A. Yes, sir; dated ahead.

(Mr. Wilson here offers the check in evidence, and it is appended to the testimony and marked "Exhibit L., A. & Co., No. 18.")

405. Q. When did you first begin to borrow from Burrough & Co.?

A. I think I loaned them money two months in succession, and after that I borrowed from them.

406. Q. Give the dates.

A. I can't give the dates, but I told you I thought it was in October, 1876; I couldn't say positively; it might have been earlier than that.

407. Q. And then you loaned Mr. Burrough money?

A. Yes, sir.

408. Q. You can examine these checks, dated September 5th, November 8th, 1876, and February 3d, March 5th, April 5th, May 5th, June 5th, and June 19, 1877, and state if they were checks drawn by you.

241 A. The check of September 5th was drawn by me, and loaned to Burrough & Co., and the amount was returned about the 20th of September.

The check of November 8, 1876, for $500, was a loan to Burrough & Co., and that was returned about the 18th or 20th of the month.

The check of February 3d, for $500, was return of a loan made to the Emery Coal Company in January.

The check of March 5th, for $452, is return of a loan to the Emery Coal Company in February.

The check of April 5th, for $500, is return of a loan to Burrough & Co., for money loaned to the Emery Coal Company in March.

The check of May 5th, for $500, is the return of a loan to the Emery Coal Company in the last part of April.

The check of June 5th, to Burrough & Co., is return of a loan for $300, loaned to the Emery Coal Company in the last part of May.

The check of June 19th, for $400, was for return of loan made to the Emery Coal Company.

(Mr. Wilson here offers in evidence the above-specified checks, and they are appended to the testimony and marked respectively "Exhibit L., A. & Co., Nos. 19 to 26," inclusive.)

409. Q. How did it happen that you borrowed so regularly, once every month, from Burrough & Co.?

A. Because Burrough & Co.'s payments came due from about the 6th to the 12th of the month, and I knew they had money and I could always get it.

410. Q. You were constantly, then, in the debt of Burrough & Co., from February, 1877, until July 5th, to the amount of $400 to $500?

A. No, not constantly.

411. Q. Your checks were out all the time?

A. No, not all the time, because there was a period of about fifteen days, generally, in which there was no check out.

242 412. Q. You borrowed regularly, however, about $400 or $500 a month?

A. $400 or $500 a month; I took whatever I could get when I needed it.

413. Q. What was the condition of the Emery Coal Company that made it necessary to borrow the money with such regularity?

A. We had bought a very large amount of coal in the fall, more than we could sell, and that coal was sold at a material loss; it was more than we could carry over purchases.

414. Q. When were the first sales made at a loss?

A. During the month of February, as near as I can recollect.

415. Q. And what was the percentage of loss?

A. The loss was small at first, but it gradually became heavier, and eventually amounted to from $1.25 to $1.50 per ton on some kinds of coal.

416. Q. What was the loss on the sales made in February? State it approximately.

A. I suppose that the loss on sales made in February was from twenty-five to thirty cents, besides interest.

417. Q. State as near as you can what sales were made in February.

A. It is very hard for me to recollect—say $12,000 to $15,000.

418. Q. Can you state it in tons?

A. I can't state it in tons.

419. Q. What was the average loss on the coal sold in March?

A. I suppose the average loss in March was from seventy-five cents to a dollar, somewhere.

420. Q. What was the average loss made in April?

A. The loss in April must have been from a dollar to $1.25.

421. Q. And in May?

243 A. $1.25 to $1.50.

422. Q. And in June?

A. About the same.

423. Q. So that on all the sales made after February there was a steady and increasing loss?

A. It appears so now, though I didn't think it was as much as that in the commencement.

424. Q. If you knew what the coal cost, and knew what it sold for, you must have known what the loss was.

A. I couldn't tell; we didn't sell all our coal at the same price; some of the coal we sold at a fair profit, and other coal we sold at a big loss.

425. Q. Your business, then, was steadily growing worse after the first of February?

A. Yes; I should say the business was in a very unhealthy condition after that, so far as profits were concerned.

426. Q. When did you make your last purchases?

A. The last purchases were made, I think, the last of April or the first of May; the deliveries were made later than that, but the purchases were made at that time.

427. Q. Did Mr. Samuel Emery, sr., know at what rate the coal was sold?

A. He did not.

(Mr. Dean here stated that he objects to Mr. Burrough testifying as to what Mr. Samuel Emery knew, and the witness then asked to have that answer erased, and said that he doesn't know what Mr. Emery knew.)

428. Q. Did you give him any information about the business after the first of February?

A. No; I couldn't tell you; I suppose we had some conversation with him.

429. Q. If so, what was the purport of the information you gave him?

A. I could not recollect; it would be impossible to say.

430. Q. Did you inform him whether the prices of coal were high or low?

244 A. I don't recollect whether I ever said anything to him about it; I don't know that we ever had a conversation on the subject; he had nothing to do with the business.

431. Q. Was your stock of coal after the first of February steadily decreasing?

A. No; not steadily decreasing; it decreased up to about the middle of March.

432. Q. Did you give any information to Mr. Emery as to the quantity of coal on hand?

A. I don't think I ever said anything to him about it; it was none of his business.

433. Q. Did Mr. Emery ever know that you borrowed money from Burrough & Co.?

A. I don't think he did; Mr. Samuel Emery, jr., knew, and Mr. Sailer knew.

By Mr. DEAN:

434. Q. Did you ever inform him?

A. No.

By Mr. WILSON:

435. Q. What was done with the money you borrowed from Burrough & Co.?

A. I told you I deposited it to the credit of the Emery Coal Co.

436. Q. How was it paid usually?

A. What do you mean by paid?

437. Q. How did you get it—in what shape?

A. Check to the order of the Emery Coal Co. or to the order of myself.

438. Q. Would the bank book of the Emery Coal Co. show the credits?

A. I couldn't say whether it would or not; I presume it would show it if it was deposited by itself.

439. Q. Where was it deposited?

A. Sometimes in the Metropolitan Bank and sometimes in the Second National.

440. Q. You kept two accounts?

245 A. Yes, sir.

441. Q. Examine checks now shown you, dated respectively September 2d, December 23, 1876, February 9, February 9, February 15, March 29, April 11, April 19, and June 21, 1877, and state what they are, and whether they were drawn by you, and for what purpose.

A. I can't tell what the business was between us after that check of September 2, 1876—whether it is return of a balance of loan or not; the check of December 23 for $2,014.62 is for taking up a note of Mr. Samuel Emery, sr., that I had borrowed from him; the check of February 9, 1877, for $1,000, to Samuel Emery, sr., is on account; the other check of February 9th, for the same sum, is also on account; the check of February 15th, to Samuel Emery, for $200, is return of loan; the check of March 29th, for $2,518.33, is in payment of a note of Samuel Emery, sr., borrowed from him and discounted by the Emery Coal Co.; the check of April 11th, for $1,203.46, is for payment of note from Samuel Emery, discounted by the Emery Coal Co.; I think that the check of April 19th, for $2,500, is for payment of a note of Langdon, Albright & Co.'s; the check of June 21st, for $4,000, is return of loan to Samuel Emery.

(Mr. Wilson here offers the above-specified checks in evidence, and they are appended to the testimony and marked respectively "Exhibits L., A. & Co., Nos. 27 to 35," inclusive.)

442. Q. When was the loan made for which the check of June 21st was given?

A. I don't recollect.

443. Q. What was the evidence of it?

A. I borrowed money of him, and exchanged checks with him at the time I did it.

444. Q. Was it given on the day it bears date?

A. I am not positive about that.

445. Q. If not, was it before or after that? I see that the stamp on the back of it bears date July 3d.

246 A. I can't tell; I think possibly that was given to Mr. Emery and dated a week ahead, but I would not say positively.

446. Q. When was it paid?

A. That I don't know.

447. Q. Was it given before you had a settlement with him?

A. That I don't know; I presume it was.

448. Q. How came the settlement that was made in July to be made at that time, and how was it arrived at?

A. Mr. Emery had been insisting upon having a settlement for some time, and I suppose we happened to get together there in the office—young Sam. Emery, myself, and Mr. Emery, sr.

449. Q. When was that statement made?

A. I don't recollect exactly—in the forepart of July.

450. Q. What time in July?

A. I can't tell; I don't recollect.

451. Q. State as near as you can.

A. It was from the 1st to the 10th.

452. Q. Was it after the 10th or before the 10th?

A. I don't know; it might have been on the 10th.

453. Q. What is your best recollection of it?

A. The memorandum on the receipt there is the 10th.

454. Q. Is that the date the settlement was made?

A. I think it is; that is, the receipt was given at that time.

455. Q. Was that the day the settlement was made?

A. We signed those receipts on the 10th.

456. Q. Had you agreed upon what they were to be before that?

A. Yes, sir; the amounts were agreed upon on the 1st of May, on the 1st of June, and again on the 1st of July, or about the 1st of July, but we never got together to sign the papers and close the matter up until the 10th of July, the time that I signed the receipt.

247 457. Q. What did you suppose the condition of the business was at that time?

A. I supposed that we were hard up—pressed for money; I knew we had been losing money, but I didn't know how much.

458. Q. Did you give Mr. Emery any information as to your being hard up, or as to your having lost money?

A. I did not.

459. Q. Did any one else, to your knowledge?

A. No, sir, not that I know of.

460. Q. Did he make any inquiry of you as to the condition of your business?

A. No, sir; not specifically that I know of. At the time we made the settlement, do you mean?

461. Q. Or about that time?

A. Not more than a general inquiry about the business when I would meet him upon the street.

462. Q. What reply did you make to that inquiry?

A. I don't know.

463. Q. Have you any idea?

A. No, sir.

464. Q. No recollection at all?

A. A conversation of that kind would not remain on a man's mind very long.

465. Q. But at no time did you represent to him that your business was good during that month?

A. I couldn't say, Mr. Wilson, what I told him; it would be impossible to recollect such conversations as those at this length of time.

466. Q. Whether or not during that time—in June or July—you made any representation to him that your business was good and that your condition was solvent?

A. I supposed that our condition was solvent.

467. Q. That is not the thing; did you make any representation to him to that effect?

A. I couldn't say anything about it.

248 468. Q. At the time of making that settlement, how much coal had you on hand on the 10th of July?

A. I don't recollect.

469. Q. About how much?

A. From the settlement we hadn't any; we didn't know it at the time; we had coal sold ahead which was not delivered.

470. Q. Did you give him any information as to the amount of coal on hand?

A. I don't recollect.

471. Q. Did he make any inquiry?

A. That I don't recollect.

472. Q. Was anything said in his presence about the quantity of coal on hand?

A. I couldn't remember; I can't say; there might have been something said, and there might not.

Adjourned to 3 p. m. October 30th, 1877.

OCTOBER 30TH, 1877.

Met pursuant to adjournment.

Present, Nathaniel Wilson, esq., for the complainants, and Mills Dean, esq., for the defendants.

Adjourned to 12 m. to-morrow, Oct. 31, 1877.

OCTOBER 31ST, 1877.

Continuation of the testimony of Edward E. Burrough.

The witness, having read over all his testimony up to this point, stated that he desired to make the following corrections:

To the answer to the 32d question I desire to add the words "as clerks."

249 There is a mistake in regard to the answer to the 153d question; there was a small increase of our stock during the time that we received the coal purchased in the spring; I can't state the exact period, but probably along in the month of April; the increase was not material. The answer states that there was a steady decrease; that is a mistake, because the receipts were considerable for two or three weeks.

By Mr. WILSON:

473. Q. It was not increased over what it was in January, though?

A. No; but still it was not steadily decreased; that means decreased all the time, which was not the case.

I understood Mr. Wilson, in the 160th question, to ask me if I sup-

posed that on the 1st of July, 1877, the firm was in an "insolvent" condition, instead of "solvent" condition, and I answered that I did not, because I understood the question to refer to "insolvent."

In the answer to the 254th question, it should read "for paper that we had borrowed from him," instead of "money that we had borrowed from him."

Cross-examination waived by defendants' counsel.

E. E. BURROUGH.

OCTOBER 31ST, 1877.

C. C. SAILER, a witness produced, sworn, and examined on the part of the complainants, deposes as follows:

I am about 45 years of age; I reside in Washington City, and I am now superintendent of the Washington and Georgetown R. R. Co.

By Mr. WILSON:

1. Q. Were you one of the members of the firm called "The Emery Coal Co.?"

250 A. I was.

2. Q. When did you first engage in the business?

A. The 1st of April, 1876, I think.

3. Q. Who were your associates?

A. E. E. Burrough and Samuel Emery, jr.

4. Q. Was there any written agreement between you as to the terms and conditions of the partnership?

A. Yes, sir; I think there was.

5. Q. Have you a copy of that agreement?

A. No, sir; I have not here; I think I have at home.

Mr. WILSON. Please to look and see if you can find a copy, and produce it.

6. Q. What was the date of that agreement?

A. I do not recollect that.

7. Q. Of what did the capital or assets of that firm consist when the partnership was formed?

The WITNESS. The amount do you mean?

Mr. WILSON. Yes; what was it?

A. I don't recollect now; I can't state.

8. Q. State, as nearly as you can, what the respective contributions were.

A. I would not like to say; I am on oath now, and I am not going to say anything I don't know.

9. Q. What did you contribute yourself?

A. $6,050, I think.

10. Q. Can you state approximately what the assets of the firm were?

A. I have answered that question.

11. Q. What contribution to the assets of the firm was made by Samuel Emery, jr.?

A. I don't know the exact amounts; I have seen it on the books, but I don't recollect.

12. Q. What contribution was made by E. E. Burrough?

A. I don't know the exact amount.

251 13. Q. Do you decline to state what the contribution was, according to the best of your knowledge and recollection?

A. I do not decline anything of the kind; I told you I do not know, and I cannot state it.

14. Q. Can you state within a $1,000?

A. I don't know that I can.

15. Q. Can you state whether it was in money or merchandise?

A. I think, to the best of my knowledge, that Mr. Emery lent them money, but I cannot say as to that, because I did not see the transaction.

16. Q. I do not want you to say anything you don't know.

A. I don't propose to; I don't want you to understand that I am trying to shirk anything.

17. Q. And I don't want you to understand that I am trying to take any unfair advantage of you.

A. My general recollection is that Mr. Burrough had in the neighborhood of $5,000, but I don't swear to that positively.

18. Q. Upon what consideration and representations were you induced to become a partner in the firm?

A. Upon the representation that I thought I could make something.

19. Q. As to the condition of the business?

A. As to the condition of the business? I don't understand you.

20. Q. How was the amount of your contribution to the assets of the firm determined?

A. Well, I paid money in for my contribution.

21. Q. How did you arrive at that sum?

A. I paid it in at different times, and I suppose the sum total would be the amount.

22. Q. I will ask it in another form; you have paid, you think, $6,050, and by virtue of that you obtained how much interest in the firm?

252 A. One-third.

23. Q. How did you know that a one-third interest in a firm was worth $6,050? What representations were made to you in regard to that?

A. We went over the stock and measured the coal and wood and such things, and figured it up so as to find out.

24. Q. Was there any written statement made preliminary to your purchasing an interest?

A. No, sir; not that I recollect of.

25. Q. What did the stock amount to at that time, do you recollect?

A. I don't recollect.

26. Q. State, as nearly as you can, the amount of stock and fixtures.

A. I could not state.

27. Q. Did anybody else, as you remember, put any cash in?

A. I don't know.

28. Q. What debts were created at the time the agreement was made?

A. There were no debts that I know of, excepting what was owing to Mr. Emery in buying him out.

29. Q. Can you state what the capital was in the aggregate?

A. No, sir.

30. Q. How was your contribution paid?

A. I told you it was paid in money.

31. Q. All at one time?

A. No, sir; at different times.

32. Q. On what dates?

A. That I am unable to say.

33. Q. How was the business conducted, and by whom was it carried on after the partnership was formed?

A. Principally by Mr. Burrough and myself.

34. Q. What were your duties?

A. I was at the wharf most of the time until September.

253 35. Q. What were your duties at the wharf?

A. To attend to discharging coal and see that coal went out, and so on.

36. Q. Who kept the books of the concern?

A. Samuel Burrough part of the time and William Hodge part of the time.

37. Q. Were statements of the condition of the firm made out from time to time? Did you ever see any statements of the condition of the firm?

A. I think there were some statements made out, but I don't recollect seeing any after September, 1876.

38. Q. Were any made out to you?

A. No; not directly to me.

39. Q. I mean statements which you saw?

A. I think there were some; I could not swear positively.

40. Q. Have you any in your possession now?

A. No, sir.

41. Q. None were made out after September, you think?

A. I don't know.

42. Q. Did you see any?

A. No, sir; none excepting statements that Mr. Burrough himself made out for me; at times when I would call upon him he would make up statements and show me how the condition of things was; Mr. E. E. Burrough attended to the outside business.

43. Q. Are you referring to E. E. Burrough when you say that statements were made by him?

A. I don't think that he made them from the books; he hadn't the books before him when he made them.

44. Q. Were they verbal or written?

A. He generally had a piece of paper and made out statements in that way showing how things stood, what was in bank, &c.

45. Q. Have you any of those in your possession?

A. No, sir; I didn't get any of them from him.

254 46. Q. How long did the business continue with you as a member of the firm?

A. From April, 1876, to the 15th or 16th of May, 1877, I think.

47. Q. What happened then?

A. I sold out to Mr. Burrough or the Emery Coal Co.

48. Q. How much had you drawn out of the firm up to that time?

A. I don't know exactly now; somewhere in the neighborhood of $2,100, I think.

49. Q. What was the consideration for the sale?

A. $8,500.

50. Q. Were any papers executed except notes?

A. He gave me notes.

51. Q. Did you make a bill of sale or anything of that sort?

A. No, sir.

52. Q. No transfer was made?

A. No, sir.

53. Q. How did the sale come to be made by you to him—upon whose application?

A. It was upon my application.

54. Q. Did you make an offer to him, or did he make an offer to you?

A. The railroad company came after me to take the position of superintendent on the road, and before I took that position I told him I wanted to know what he would give me if I sold out to him; he said he couldn't tell me just then, but he would look over the books and figure it up what he could give me; this was perhaps Thursday or Friday, and I asked him if he could give me a definite answer by Monday; he said he thought he could, and I think on Monday he told me that he didn't think it was worth more than $8,500; he said there was some outstanding debts that we would have to lose.

55. Q. You accepted the offer?

255 A. Yes, sir.

56. Q. Before accepting it did you make any examination into the condition of the business of the firm?

A. I had looked over the books at the wharf sometimes—Sundays once or twice—but I couldn't tell much about it by them, because I didn't know what was in bank.

57. Q. Had you, at the time of accepting that offer, an accurate knowledge of the condition of the business of the firm?

A. No, sir; I would not have taken the notes without some security if I had.

58. Q. Are the notes still in your possession?

A. Yes, sir.

59. Q. Your particular employment was at the wharf?

A. It was until probably the 1st of October; I think I went to the Centennial the 18th of September, and when I came back I was at the wharf probably a day or two—I don't know exactly the time—and then Mr. Burrough asked me how it would suit me to take charge of the yard at B street; I told him I had no objection, and I went up there and took charge of that yard.

60. Q. And you were there from that time out?

A. Yes, sir.

61. Q. Where were the books kept at that time?

A. At the wharf.

62, Q. All of them?

A. Yes; all except a memorandum-book that we kept at B street and sent down every day.

63. Q. Who had charge of the wharf after you left there?

A. Mr. Burrough said that he could go there until ten o'clock and be there after three o'clock, and that he could attend to the balance of the business during the day—the banking business, and so on.

64. Q. Between September, 1876, and the time of your selling
256 out was there no statement of the assets and liabilities of the firm regularly made out and examined by anybody?

A. Not that I know of. I asked for them two or three times, and Mr. Burrough's brother gave me the same answer that I told you awhile ago—that he hadn't all the accounts in from Mr. Burrough, his brother, and he couldn't give me a full statement.

65. Q. Was the book balanced the 1st of January?

A. Not to my knowledge.

66. Q. After you sold out you had nothing further to do with the business?

A. No, sir.

67. Q. And you never went there and took any part in the business?

A. I never took any further part in it.

68. Q. When you sold out, which was on the 16th of May, and were the notes that were given drawn as ordinary promissory notes?

A. Yes, sir; I believe so.

69. Q. How were they drawn?

A. They were drawn for $1,700, I think it was; I think the first one was for three months, the next one four, and so on out until it was paid off; there were five notes altogether, I think; I have got the notes.

70. Q. They were drawn payable to you?

A. Yes, sir.

71. Q. And signed by whom?

A. E. E. Burrough for the Emery Coal Co.

72. Q. Were they all dated the same day?

A. Yes, sir.

73. Q. Was there any other security given?

A. No; there was no security on the notes.

74. Q. Was any security given in any other way, directly or indirectly?

A. A person said if the notes were not paid—that is, if they could not meet the notes when they came due—he would help them out.

257 75. Q. Who was that?

A. Samuel Emery, sr.

76. Q. When was that statement made?

A. Probably a day before I sold out—in that neighborhood.

77. Q. Were the notes given on the same day, and were they received by you on the same day?

A. Yes, sir.

78. Q. That is, on the day of the sale—the 16th.

A. Yes, sir.

79. Q. They came into your possession that day?

A. Yes, sir.

80. Q. Was any effort made by you to obtain any security?

A. Yes, sir; I wanted security, but from what Mr. Samuel Emery, sr., told me I took the notes without any security, because he said that if they couldn't meet them when they came due he would see them paid; that is the only reason why I wasn't more particular about having an endorsement.

81. Q. State, as nearly as you can and as fully as you can, just what was said by Mr. Samuel Emery, sr., in regard to that matter before the sale was consummated.

A. Well, I don't know that I could say much more than that; Edward E. Burrough went to Baltimore, and he sent a telegram to me.

82. Q. Excuse me—was that before the notes were made?

A. Yes, sir; he went to Baltimore—at least I received a telegram from Baltimore—I suppose he was there, or he couldn't have sent it very well; he sent a telegram to me stating that he couldn't fix that matter there, and for me to see the old gentleman (Mr. Emery) and see if he wouldn't go on the notes; I went to Mr. Emery and showed him the telegram, and he said that he wouldn't go on the notes, but if they couldn't meet the
258 notes when they came due he would help them out; that is about the sum and substance of my conversation.

83. Q. What was the object of Mr. Burrough's visit to Baltimore? What was he trying to effect there?

A. He represented that he went there to try and get some one to go security on these notes; I don't know what he went for.

84. Q. All you know about it is what he told you?

A. Yes, sir.

85. Q. Do you remember the date when that promise was made by Mr. Emery, sr.?

A. No; I don't remember the exact date.

86. Q. Was anything put in writing as to his liability?

A. No, sir.

87. Q. After he had made that statement to you you took the notes?

A. Yes, sir.

Cross-examination by Mr. DEAN:

88. X Q. At the time you sold out your interest in the Emery Coal Co. did you believe the concern to be solvent?

The WITNESS. That is that they were in good condition?

Mr. DEAN. Able to pay their debts.

A. I did.

89. X Q. You figured up their assets over their liabilities at $25,000, did you?

A. I never figured it at all.

90. X Q. How was the $8,500 for your interest reached, then?

A. Mr. Burrough said that my interest in the concern would be about that.

91. X Q. Did you think that was about right?

A. Well, I thought this; I had a good position offered me, and I had paid in $6,050, and I had asked for a statement a number of times but couldn't get it, and I thought it wasn't worth while to ask any more.

259 92. X Q. Was it understood between you and Samuel Emery, sr., at the time that he said that he would help them to pay those notes, that he would pay them himself, or that he would loan the money to them for that purpose?

A. My understanding of that was that if they could not raise the money to pay the notes he would.

93. X Q. He would raise it and pay it himself, or loan it to them to pay?

A. I couldn't tell what he meant by it; you can judge of that matter

just as well as I can; that is what he said; he said that if they couldn't meet the notes he would help them out with it as they came due.

94. X Q. Had not Mr. Emery, sr., before that time, been aiding them by loaning them money whenever they had a note to pay?

A. I believe he had; I know this only from what Mr. Burrough had told me.

95. X Q. And was not that the understanding that was between you—that he was to do that with these notes?

A. I suppose that is what he meant; I don't know.

96. X Q. Did you understand that Mr. Emery, sr., was to assume any responsibility whatever on that paper?

The WITNESS. In regard to me?

Mr. WILSON. Yes.

A. I should think so, if a man's word was good for anything; if I give you my word to pay you $5.00 to-morrow, I will be there with it.

97. X Q. Why didn't he endorse the paper, then?

A. He said they had a good deal of paper out, and he wanted them to try to get along without borrowing so much money, or something to that effect; I don't know the exact words, but that was the amount of it; that Ed should push his collections closer, or something to that effect.

260 98. X Q. From your conversation with Samuel Emery, sr., at that time, do you know what his opinion was in regard to the solvency of the concern?

A. No.

99. X Q. You did not hear him say whether he thought it was good or otherwise?

A. I don't recollect that I did.

100. X Q. Are any of these notes due?

A. Yes, sir.

101. X Q. How many of them?

A. I don't know whether there are two or three of them due.

102. X Q. Have you ever applied to Samuel Emery, sr., to make payment on them?

A. No, I don't know that I have; no more than that I thought he ought to be responsible for them.

103. X Q. What did he say at that?

A. He made the excuse that he had lost enough himself, which didn't fetch much in my pocket.

Redirect examination by Mr. WILSON:

104. Q. At the time that you sold out were you satisfied or dissatisfied with the management and condition of the business?

(Mr. Dean objects to the question as not being proper redirect examination.)

A. I don't know that I was much dissatisfied; a person always has dissatisfaction in business at times.

105. Q. That question was suggested by your saying that you had asked several times for a statement.

A. That part of it I was dissatisfied with, of course.

106. Q. State the relative prices of coal—the prices that were charged for coal sold and at which coal was bought while you were at the wharf.

A. I couldn't tell; there were so many prices while I was at the wharf. I couldn't say anything about what the prices were.

261 107. Q. I mean up to the time that you left the wharf; what did you get in relation to what it cost you, more or less?

A. Sometimes I think we got more, and sometimes I used to think we got less.

108. Q. What I want to get at is whether you had any means of knowing the difference between the prices for purchase and the prices of selling; in point of fact, did you know?

A. I think I can refer you to Mr. Albright to answer that question.

109. Q. He knows what he got for it?

A. Yes; he knows what it sold for, too. Mr. Albright at one time told them—so Mr. Burrough said—to sell some coal to the Treasury, and it was below what it cost us. I can tell more about that if you want it.

Mr. DEAN. Tell it all.

A. And that the losses he would make good; that is what Mr. Burrough represented. Mr. Albright and I never had much conversation about the coal.

By Mr. WILSON:

110. Q. When was that conversation?

A. I don't recollect the date.

111. Q. About what time was it?

A. I don't recollect.

112. Q. When was the coal sold?

A. I don't recollect that.

113. Q. What year?

A. It was in 1876.

114. Q. Was the coal sold?

A. I suppose it was; it was delivered there.

115. Q. When was it delivered?

A. I don't know.

116. Q. Do you know whether Albright & Co. did actually allow a drawback?

A. No, I don't; it was represented to me when I left the firm, by Mr. Burrough, that he had not.

262 117. Q. You had no knowledge whatever that Albright & Co. had allowed any drawbacks?

A. They had allowed some drawbacks previous to that, I think.

118. Q. To what amount?

A. I don't recollect.

119. Q. Have you any idea?

A. No.

120. Q. Do you know that they allowed a drawback of $5,000 in October?

A. I have no recollection of it now; I might have known it at the time, but I don't recollect now.

121. Q. Did you regard Mr. Burrough as a truthful man when he made these statements to you?

A. Yes, sir; generally, in business.

122. Q. In regard to the replies he made to you concerning the business?

A. I did at the time.

123. Q. Do you now?

A. Well, that is another question; I don't know that I have ever known him to tell a downright lie.

Recross-examination by Mr. DEAN:

124. X Q. Do you believe that Mr. Burrough has ever intentionally misrepresented any facts to you in regard to this business?

A. I would rather not answer that question.

125. X Q. I don't ask you whether he ever misrepresented, but whether he ever intentionally misrepresented?

A. It is hard for me to tell what his intentions were.

126. X Q. Did he ever misrepresent any facts to you?

A. I think he has.

127. X Q. In what respect?

A. I couldn't name them now.

128. X Q. You think he has misrepresented facts to you, but you can't say what facts?

263 A. No, sir.

129. X Q. Nor at what time these misrepresentations were made?

A. No, sir; I don't know that he misrepresented anything that amounted to anything any way. In regard to bills sometimes I thought he misrepresented them.

130. X Q. What sort of bills?

A. Well, for instance, I would ask him what a man owed, and in looking over the books I would find a certain amount and he would say that he didn't owe that amount.

131. X Q. Might not that have been caused by his having made some payments that were not posted to the account?

A. That is what he said it was.

132. X Q. As a general thing were not the books of the Emery Coal Co. behind time in being posted?

A. I should say so.

Adjourned to 2 p. m. to-morrow, Nov. 1, 1877.

NOVEMBER 1ST, 1877.

Continuation of examination of C. C. Sailer.

By Mr. WILSON:

133. Q. Have you the paper which I requested you on yesterday to produce?

A. Yes, sir.

(The witness produces the agreement of partnership, of which the following is a copy:

WASHINGTON, D. C., 1*st April*, 1876.

We, the undersigned, hereby form a copartnership for the purpose of conducting the coal and wood business in this city, under the name and style of the Emery Coal Company, and subject to the following conditions:

First. Each partner shall devote his entire time and attention to the business.

264 Second. Neither partner shall use the firm's name or credit, property, or employés for his private purposes.

Third. In cases of difference of opinion, the decision of the majority to be abided by.

Fourth. No partner to draw over one hundred and seventy-five dollars ($175) per month; such drawing to be made in two installments, on the 1st and 15th instant, respectively, of each month.

Fifth. The profits or losses arising from the business to be equally divided between the partners at the expiration of each year.

Sixth. Interest shall be allowed on the capital invested by each member of the firm at the rate of eight per centum per annum, and said interest charged to expense account.

Seventh. This agreement can be dissolved by mutual consent.

Witness our signatures.

C. C. SAILER.
E. E. BURROUGH.
SAMUEL EMERY, JR.

Witness: SAMUEL G. BURROUGH.)

134. Q. Under this agreement what was the amount of capital agreed to be contributed by you?

A. I do not know that there was any particular capital agreed upon.

135. Q. Did you ever agree to contribute twelve thousand dollars; that is what I want to get at?

A. No; they came and asked me what I could put in, and I told them probably I could borrow some money; that friends had offered to loan me money, and if necessary, probably I could put in twelve thousand dollars; but Mr. Burrough said that he didn't think it would be necessary—didn't think it would be needed.

136. Q. Did he ever ask you to put it in?

A. Last spring he asked me if I could raise any more money.

137. Q. Was that early in the spring?

A. Yes, sir.

138. Q. What did you say?

A. I told him I did not think I could put in any more.

265 139. Q. You never agreed to put in any more than that?

A. No, sir.

140. Q. Were you in a condition at that time to have contributed more money?

A. I suppose I could have got it by borrowing it.

141. Q. You had no other money yourself?

A. No, sir.

142. Q. That was all your available means?

A. Yes, sir.

143. Q. Was it your savings?

A. Yes, sir; it wasn't all my savings either, because there was about two thousand dollars of it that really belonged to my wife.

144. Q. Did you own any real estate at that time?

WITNESS. When I went into the firm?

Mr. WILSON. Yes.

A. Yes, sir; I owned a lot at that time.

145. Q. Do you own it still.

A. No, sir.

146. Q. When was this paper executed which you have produced to-day?

A. I think about the time it is dated; I could not say certainly; it might have been a few days afterwards; I don't recollect; I never charged my mind particularly with it.

147. Q. In whose handwriting is it?

A. I think in Samuel G. Burrough's handwriting probably; I do not recollect who drew it up; probably I knew at the time.

C. C. SAILER.

NOVEMBER 1ST, 1877.

SAMUEL EMERY, Jr., a witness produced and sworn on behalf
266 of the complainants, deposes as follows:

My age is twenty-six; I reside at the corner of Third and C streets, Washington City, and am a clerk.

By Mr. WILSON:

1. Q. What was your occupation prior to the first of April, 1876?

A. Clerk.

2. Q. With whom?

A. Samuel Emery.

3. Q. At what compensation?

A. At the rate of twelve hundred dollars a year.

4. Q. How was it paid?

A. I generally tried to draw as near to a hundred dollars a month as possible. I have been working for Mr. Emery for the last eight years, and I generally had to overdraw my salary. I never could live within my means. I generally drew it as near in monthly installments as possible.

5. Q. On the 1st of April, 1876, how did your account stand with your father?

A. I cannot tell you.

6. Q. Did he owe you anything?

A. No, sir; he never did. He had an account against me two years ago that would put in bar all that I had worked for him at that time, so he couldn't have owed me anything.

7. Q. He paid you all that he owed you?

A. Oh, yes, sir; I always, somehow, worked it in advance.

8. Q. On the 1st of April, 1876, what arrangement or agreement was made between you and the defendants, Burrough and Sailer?

A. There was an arrangement made between Mr. Sailer, Mr. Burrough, and myself to buy Mr. Samuel Emery out and take charge of the coal business ourselves.

9. Q. Was the agreement in writing?

A. Yes, sir; I think we drew up writings of copartnership, if I am not mistaken.

267 10. Q. What was your contribution to the capital or assets of the firm?

A. My contribution was forty-six hundred dollars.

11. Q. In money?

A. In money; yes, sir.

12. Q. Cash?

A. Yes, sir.

Mr. DEAN. Mr. Wilson meant by that cash in actual money.

WITNESS. No; it wasn't cash in actual money when we went into business. When we first took hold of the concern ourselves father made Mr. Burrough and myself a present of nearly five thousand dollars apiece; he did not make me a present of quite that much, because I had overdrawn the amount that I was to draw during the year, and I only received forty-six hundred dollars; that is, that was in the business; he gave it to us in the business, and we gave him notes for the balance; I do not know the exact amount.

13. Q. Of what was the forty-six hundred dollars composed—stock or credits?

A. It was supposed to have been the profits that he made in the business previous to that; he made us a present of that to start us.

14. Q. He made a present to you and Burrough of the supposed profits in the business?

A. Yes, sir.

15. Q. And your share of the supposed profits was your contribution to the capital of the firm?

A. Yes, sir.

16. Q. What part of the business was conducted by you after that arrangement was formed?

A. I could not say that any particular branch of the business was conducted by me, as I was absent from the city most of the time, having taken two or three trips; I didn't attend to much business myself at all.

268 17. Q. What part of the business did you attend to?

A. No particular branch at all.

18. Q. Was it drawing checks and notes?

A. No, sir.

19. Q. You did not draw any notes?

A. No, sir; I had nothing to do with the financial part of it.

20. Q. Between the 1st of April, 1876, the time when this arrangement was made, and the 16th of May, 1877, how much had you drawn out?

A. I cannot tell you.

21. Q. Approximate to it as near as you can.

A. Probably twenty-five hundred dollars; I cannot come now any closer than that. I know at that time I had some heavy expenses, having been married that year and furnished a small house.

22. Q. Do you know what it was from the 1st of April, 1876, up to the time the assignment was made, approximately, how much you had drawn out?

A. Probably in the neighborhood of four thousand dollars; I do not recollect the exact amount. There were some credits to me on account of overcharges, and one or two checks which had been charged to me that were afterwards returned with my checks. I couldn't come any closer than that.

23. Q. Had you not drawn out about all that you had contributed?

A. It is very hard to say; I do not exactly know the amount that I drew out at all. I drew out what was necessary for me to live on, and that was all. I never kept a very correct account of my expenses.

24. Q. Did you ever examine the books of the firm before the assignment?

A. No, sir.

25. Q. Did you ever have any statement made to you?

A. No, sir; no positive statement.

269 26. Q. No statement of the condition of the business of the firm?

A. No, sir; I supposed it was in a flourishing condition; I was always lead to believe so. The fact is, I was very seldom there to attend to anything, or to have any statements made to me, I having gone away; I was absent on two or three long trips.

27. Q. Were you present when the settlement was made with your father in July, 1877?

A. I do not know what settlement you refer to.

28. Q. Any settlement that was made with your father on or about the 10th day of July; do you remember that?

WITNESS. What was it?

Mr. Wilson here shows witness Exhibits L., A. & Co. 3, 4, 5, 6; after examining which witness says:

Yes, sir; I was there when that settlement was made.

29. Q. Was any statement presented at that time from the books of the concern?

A. Like these? This statement was presented.

30. Q. Statements like Exhibits 3, 4, and 5 were presented?

A. Yes, sir.

31. Q. Was any examination made by you of the books at that time?

A. No, sir; the book-keeper made out his accounts and we settled it at the office.

32. Q. Did you ever attempt to sell out your interest in the firm?

A. I did at one time.

33. Q. When?

A. I cannot say.

34. Q. About when?

A. Somewhere in the neighborhood of May, 1877; I was going to the Black Hills at the time when I offered to sell out.

35. Q. Upon what terms?

270 A. I offered to sell out for four thousand dollars cash.

36. Q. To whom was the offer made?

A. To Edward E. Burrough.

37. Q. Was it accepted?

A. It was not; the money was not forthcoming, and I went away. He said that he didn't know; he would let me know. I came back again in a month and took hold of the business.

38. Q. Was that about the time Mr. Sailer sould out?

A. Somewhere in that neighborhood.

39. Q. Were you a party in any way to the purchase of Mr. Sailer's interest?

A. No, sir; I was cognizant of the fact that he had sold.

40. Q. To whom did he sell—to the company?
A. To E. E. Burrough and myself.
41. Q. Then you were one of the purchasers?
A. Yes, sir.
42. Q. How did you arrive at the estimate of the value of the business expressed by that offer?
A. Mr. Burrough arrived at that. I let him take his statement of the business, and I went by that.
43. Q. What was the offer to him? What were you to pay him?
A. $8,500, I believe.
44. Q. Was it before or after that that you agreed to take four thousand dollars for your interest?
A. It was after that.
45. Q. How long after?
A. Probably twenty days. It was merely a verbal proposition, which was not accepted.
46. Q. What had occurred between the time that you made the offer to Burrough to sell your interest to induce you to sell your interest for four thousand dollars, when you had agreed to pay Mr. Sailer eight thousand five hundred dollars?
271 A. I contemplated a visit to the Black Hills to stay there, and I had figured up my interest in the business at what I had drawn and Mr. Sailer had drawn, and I supposed my interest would come very near his, which would amount to somewhere in the neighborhood of eight thousand dollars, and I wanted money, and proposed to stay there when I went, and I wanted to have money to do business with there. That was the reason.
47. Q. When you figured up the state of accounts did you examine into the condition of the business of the concern?
A. I did not. I was not competent book-keeper enough to do so.
48. Q. Did you know how much stock there was on hand?
A. I did not. I imagined the business was in good condition.
49. Q. Did you know what debts there were?
A. No, sir.
50. Q. Did you know what the assets were?
A. I did not.
51. Q. When did you return from the Black Hills?
A. One month after I started.
52. Q. Just tell the date.
A. I cannot.
53. Q. What month was it?
A. I think it was June.
54. Q. What time in June?
A. About the middle.
55. Q. You then resumed your connection with the firm?
A. Yes, sir.
56. Q. What did you do?
WITNESS. What do you mean by what I did?
57. Q. Did you go down there and take a desk, or interest yourself in any way in the business?
A. Very slightly.

58. Q. Did you go at all? Did you visit the office?
A. Yes, sir.
271½ 59. Q. Every day.
A. No, sir.
60. Q. Did you make any inquiry as to the condition of the business when you returned?
A. I did.
61. Q. To whom?
A. Mr. Burrough.
62. Q. What report did you receive?
A. Very favorable. He said that the business was in a good condition and flourishing. I then proposed to go down there and take charge of the wharf myself. I was to take exclusive charge of the wharf on the 1st day of August, and made arrangements to that effect.
63. Q. What do you know of any demand made by your father on the firm for the payment of money due to him?
WITNESS. How do you mean by any demand?
Mr. WILSON. Just that. What do you know of any demand made by your father on the firm for any money due to him?
WITNESS. In regard to this settlement here?
Mr. WILSON. Well, anything; any money due him generally.
A. When this settlement was made we settled with him and he had our notes. We settled by exchange of settlement for notes that he held in his possession when we first bought him out?
Mr. DEAN. Mr. Wilson means did he ever demand payment of these notes before that time?
A. Yes, sir; frequently; he frequently asked for money.

By Mr. WILSON:

64. Q. Why was it not paid?
A. Well, we complained of shortness of money in the business. We were doing a very heavy business, and we needed money in our business, and naturally we would be very apt to persuade him to wait a little longer for it when he wanted it than anybody else.
272 65. Q. That settlement was made on the 10th of July, as appears by the endorsement.
A. I do not remember the date
66. Q. Here are the initials of Mr. Burrough, and 7, 10, '77. Do you remember what day of the week it was?
A. No, sir; I do not. I know it was in July, but he may have made a mistake in the date.
67. Q. Do you remember the date of the assignment?
A. I do not know. It was in the neighborhood of the 18th or 20th of July.
68. Q. Did you go with Mr. Burrough to the office of Ross & Dean?
A. Yes, sir.
69. Q. What day?
A. I could not tell you.
70. Q. Did you go more than once?
A. I think I did. Once or twice.
71. Q. On different days?
A. Not in regard to the assignment; no, sir; I only went one day.

72. Q. Did you go in regard to any matter connected with the assignment?

A. Nothing, except after the assignment was made.

73. Q. You do not remember about what day of the week it was?

A. I do not.

74. Q. If the 18th of July was Wednesday, had you been to the office of Ross and Dean before that week?

A. No, sir; I do not think I had been there for a month before.

75. Q. Where were you on the Sunday prior to that day?

A. Those are hard questions; I could not tell you.

76. Q. Were you in town?

A. In all probability I was; I think I was.

77. Q. Do you remember having an interview with your father on that day?

273 A. No, sir.

78. Q. Or on the previous day?

A. I cannot recollect what interview I had.

79. Q. Did you have any conference with him about the condition of the business on the Sunday before?

A. Yes, sir.

80. Q. What was the object of it?

A. A day or so before the assignment we had a conference in regard to the business, and I wanted a statement made. At that time I had gone to the wharf and looked at the books, which were not kept up by the bookkeeper, and I demanded that he should post his books up and make a statement of the accounts before I took hold on August 1st. We had a conference in regard to the state of the business, which was not very favorable.

81. Q. It was not very favorable?

A. No, sir.

82. Q. That was understood between you all; that was the subject of conversation, was it?

A. That was my opinion.

83. Q. Did you express it?

A. I did; yes.

84. Q. What was said by the others?

A. Burrough thought that everything was straight. Father did know anything about it; he was ignorant of it.

85. Q. What date was that?

A. That was within a day or so before we made the *con*signment.

86. Q. Was it Monday, Tuesday, Wednesday, or was it Sunday or Saturday?

A. I cannot tell you. It was between Sunday and Wednesday—probably Saturday.

87. Q. What time of the day was it?

A. I cannot tell you that.

88. Q. Was it morning or evening?

A. I think it was in the evening.

274 89. Q. Where was it?

A. At 3d and C streets.

90. Q. At the office?

A. At the house.

91. Q. At whose house?

A. Father's house.

92. Q. Where he resides?

A. Yes, sir.

93. Q. At your father's residence?

A. Yes, sir.

94. Q. Do you know anything about the notes that were lost at that time?

A. No, sir. I heard Mr. Burrough say that he had lost his pocket-book, with some notes, but I understood afterwards that he had found them.

95. Q. When did you hear that?

A. I can't tell you. I am a very poor hand to remember days or dates. The fact of it is that I never attended much to the business and never took any interest in it, and am not thoroughly posted.

96. Q. Do you know what notes they were that were lost?

A. I do not.

97. Q. Do you know of any promise that had been made as to the disposition of the notes?

WITNESS. In what respect?

Mr. WILSON. In any respect.

WITNESS. What do you mean? Put your question so that I can get at the point.

(The question was here read to the witness.)

The WITNESS. What notes were they? I do not know what notes were lost. I hadn't an idea what notes were lost and what were found. You are asking a question that I do not know anything about.

98. Q. Do you know of any promises that have been made relative to a note for $1,300 from the Washington Brick Machine Company to the Emery Coal Company?

275

A. I think that it was to be given as collateral for some notes that we had from father. I know there were some notes turned over to him for collateral for notes that we borrowed from him.

99. Q. When was that done; do you know?

A. I do not.

100. Q. Have you any idea?

A. I have not. Mr. Burrough attended to that.

101. Q. When did you first hear that mentioned?

A. Two months before; a long while before. I know we borrowed some money and agreed to give collateral for it.

102. Q. When did you first ascertain that the business was not in a satisfactory condition?

A. Somewhere in the neighborhood of the 15th to the 18th of July, two or three days before the assignment.

103. Q. How did you make that discovery?

A. We went over the stock—went over the assets and liabilities.

104. Q. When?

A. Somewhere in the neighborhood of the 15th to the 18th of July.

105. Q. With whom did you go over them?

A. With Mr. Burrough. The bookkeeper made out a statement and brought it up to the office at 1st and B streets.

106. Q. Was that before you had had a conversation with your father on Sunday?

A. I cannot say. It was either before or after, that is sure. It was very close on to it. It might have been a day before or after.

107. Q. What information had you about your condition when you had the conversation with your father?

A. I went there, and, as I told you, I expected to take charge of the wharf on the 1st of August, and I demanded the bookkeeper to post his books and make a statement of his business before I took hold. The books had not been posted.

276 108. Q. State when that was; that is what I want to know.

WITNESS. When I first demanded this statement?

Mr. WILSON. Yes.

A. Probably between the 10th and 12th of July. Somewhere along about the middle of the month I went down to the wharf and proposed to Burrough that we should cut down expenses. I had come back from my trip to the Black Hills and attempted to take charge of the wharf and keep the books myself, so as to cut expenses down. Not having any particular branch of the business to attend to at that time, I, for the first time during my connection with the concern, made up my mind to take hold of that particular branch. That was the direct cause of it.

109. Q. I will ask you again what information in regard to the real condition of the business you had received before your conversation with your father?

A. I do not think we had any direct information at all. I cannot tell you; it was in such close dates; the thing was so quick I cannot state positively.

110. Q. Had any written statement of the business affairs of the concern been previously made out?

A. I think there was a statement of accounts made out, and taking our fixture account and stock account, I think our assets were ahead of our liabilities, and we went over the books.

111. Q. When was that done?

A. In the neighborhood of the 15th to the 18th of July—about those dates. It was between Friday and Wednesday that all the business that I recollect was attended to.

112. Q. Had any statements been made out before that?

A. Not that I know of; I never made out any statement.

113. Q. Did you ever see any?

A. No, sir.

114. Q. Were the books ever balanced?

277 A. I do not know certainly; I was very seldom there; sometimes I did not go there for weeks. I was not a working partner. The reason that I am so ignorant of the business affairs is that I did not attend to the business, and it is only within the last three or four days that this conglomerated mess got into my head.

115. Q. Do you know anything about a check that was presented, the payment of which was refused, before the 18th of July?

A. I heard of such a thing.

116. Q. When did you hear of it?

A. I cannot recollect the date, but it was something in connection with the money. At the time the check was given there was a note of a man named Crossman that we had discounted that was not paid, and I think they appropriated money that was in bank to pay that note instead of paying the check. It was some quibble like that about the note. I know that there was just enough money to meet the check or the note in bank, and I think the money was appropriated to meet the note unbeknown to Mr. Burrough, who was at that time attending to the financial part of the business, and I think that afterwards Langdon & Albright got the check, if I am not mistaken.

117. Q. You knew about it at the time, did you not?

A. A day or so afterwards it became generally known. I was not apt to find out anything directly afterwards, because sometimes I did not get there directly after any occurrence. If I was there one morning may be I would not be there for a couple of days afterwards, and I would not hear of things as quick as I ought to.

118. Q. Do you know the date of that?

A. I do not.

119. Q. Can you fix it in relation to the meeting at your father's?

A. I cannot; I couldn't fix the date positively; I couldn't even give an idea of the date; I know it was somewhere in the neighborhood of the time.

278 120. Q. You say you did not give very much attention to the business. What other business were you engaged in?

A. None other.

121. Q. Are you engaged in any business now?

A. I am a clerk for Samuel Emery.

122. Q. Do you remember seeing a statement made about the first of January in the invoice-book of the purchases and expenditures up to that time?

A. I couldn't tell such a thing as that unless I could see the book. My knowledge of the business is so vague that I have to see things in order to know whether I have seen them before or not.

123. Q. Have you any idea what the aggregate of the purchases was during all the time you were in business?

A. I suppose we purchased in the neighborhood of 60 to 70 thousand tons of coal.

124. Q. Do you know what the aggregate cost was?

A. I do not; I do not even know the number of tons; if I could tell the number of tons I could tell about the aggregate cost, although it would be pretty difficult then, because coal at that time was fluctuating.

125. Q. Do you know whether the books will show that that coal was sold at an aggregate profit or loss?

A. I do not; I should think my previous answers would answer that; if I should say now that I know that, I would directly contradict the other statements I have made. I have no knowledge to swear to. My knowledge is indirect knowledge that I have obtained in the last 7 or 8 days, before I heard of the concern.

Cross-examination by Mr. DEAN:

126. X Q. In your direct examination, in referring to the amounts that

your father had presented to you and Burrough, you used the ex-
279 pression "the supposed profits of the business." Was there not a strict examination made of the business, and that amount ascertained as profits?

A. Oh, yes.

Mr. DEAN. They arrived at it by——

WITNESS. By estimating the stock.

127. X Q. Not only by estimating the stock but by actual measurement of stock and taking a strict account of all the assets, and deducting therefrom all that your father had put into the business?

A. Yes, sir.

128. X Q. And that showed that he had made a profit of over $10,000?

A. Yes, sir.

129. X Q. Which he presented to you and Burrough?

A. Yes, sir.

SAM'L EMERY, JR.

Adjourned to meet by agreement.

NOV. 20TH, 1877.

WILLIAM T. HICKOK, a witness for the complainants, having been duly sworn, testified as follows:

My age is 31 years; I reside in Washington; I am a book-keeper.

By Mr. WILSON:

1. Q. State whether you were recently in the employ of the firm of Langdon, Albright & Co; and, if so, in what capacity.

A. I was in the employ of Langdon, Albright & Co. from about the middle of July, 1876, until August 1st, 1877, as book-keeper.

2. Q. You know Mr. Borrough, one of the defendants in this case, do you not?

A. Yes, sir; I do.

280 3. Q. Were you present on or about December 1st, 1876, when Mr. Borrough presented a statement as to the condition of affairs of the Emery Coal Company?

A. Yes, sir.

4. Q. Who were present at the time besides yourself?

A. Mr. Burrough, Mr. Albright, and myself were the only three persons there.

5. Q. How came that statement to be made, if you know?

(Objected to by defendants' counsel.)

A. Mr. Burrough had been requested several times to produce a statement as to the condition of affairs of the Emery Coal Company.

6. Q. Requested by whom?

A. By Mr. Albright.

7. Q. To your knowledge and within your hearing?

A. Yes, sir; I heard Mr. Albright ask him at least twice, if not oftener. He had been buying a considerable amount of coal, and they were indebted to the firm of Langdon, Albright & Co. to a considerable amount, and it was very natural that Mr. Albright should feel interested and want to know how the firm stood.

(The latter part of the answer is objected to by Mr. Dean as being argumentative.)

I heard Mr. Albright express himself in that way. I heard Mr. Albright tell him that he was anxious to know, because he had sold them a large quantity of coal.

8. Q. On how many occasions did he make that request?

A. I know that he made it on two occasions, and I think more.

9. Q. At the time of which I have spoken what was said by Mr. Burrough as to the indebtedness of the Emery Coal Company, and to whom the indebtedness was?

A. I remember Mr. Burrough handing a paper to Mr. Albright, and saying that it was a statement of their affairs as near as he could get at it at that time. The exact words after that I cannot remember.

281 10. Q. Examine Exhibit A to the original bill in this case, and state if that is a true copy of the statement presented at that time.

A. As near as I can remember, it is.

11. Q. At that time, or on a previous occasion, did he state to Mr. Albright to whom their indebtedness was?

A. I remember his stating at that time that Langdon, Albright & Co. were the only firm they owed for coal, except a small bill for soft coal; he did not state for how much.

12. Q. What statement did he make in regard to any other indebtedness?

A. As near as I can remember, he said to Mr. Albright, "You will see we do not owe anybody but you." There was a long conversation between us of an hour; I know that we waited there until after dark; it was snowing and a stormy night; I remember the circumstance very distinctly, and that Mr. Burrough and Mr. Albright talked a long time over business matters generally and the coal trade, and Mr. Burrough said, I am very positive, at that time, that Mr. Emery, sr., had loaned them $10,000, which was already invested in their business, or that they owed him $10,000; I do not remember the exact words.

13. Q. Was there any interview subsequent to that time with Mr. Burrough in which the liabilities of the firm were mentioned?

A. I have heard Mr. Burrough say several times in the office that the Emery Coal Company did not owe anybody but Langdon, Albright & Co.; that they were the principal creditors, and that they didn't owe any amount to anybody else, with the exception of a few hundred dollars.

14. Q. In that statement which you have referred to the balance in favor of capital account is stated at $53,000. What was said concerning the indebtedness to Mr. Emery being part of that capital account?

282 A. I do not remember its being mentioned in connection with that statement. It was said in conversation after the statement had been looked over, I think. There was very little explanation had of that statement, or either statement, as I remember. But Mr. Burrough remarked that they had borrowed from Mr. Emery $10,000, or, at all events, that they owed him $10,000.

15. Q. Where did he say that $1,000 was?

A. He didn't state, except that it was in their business.

16. Q. Did he at that time say of what the $53,000 consisted?

A. I don't think that there was any particular explanation made of that amount; I don't remember of any.

17. Q. When did Mr. Burrough first make the statement in your hearing that they didn't owe anybody but Langdon, Albright & Co.?

A. Well, I heard him make that statement several times; I think that evening was the first; I remember of his saying it then.

18. Q. And then how often afterwards, and on what occasions?

A. Well, it was always in the office, because that was the only place where I heard any conversation between Mr. Burrough and Mr. Albright. I think it was in the spring; I do not remember the date; but I remember of his being*ing* in the office in the St. Cloud building at least twice, and making that remark.

19. Q. Did he say anything in your hearing about the real estate he owned?

A. I think Mr. Albright asked him if he didn't own some real estate—the house he lived in on Capitol Hill—and he said he did.

20. Q. Did he say anything about any indebtedness on that house?

A. I do not remember his saying anything of the kind; I do not remember that he was asked whether it was encumbered or not.

283 21. Q. Do you remember his stating what the value of the house was?

A. I think he said it was worth 3 or $4,000; indefinite, I believe.

Cross-examination by Mr. DEAN:

22. X Q. Are you positive that he said that the house on Capitol Hill that he owned was the one that he lived in?

A. It is my impression that he did; yes, sir.

23. X Q. He said that the house he lived in was his own, did he? Give us, as near as you can, the words that he used.

A. If you will let me explain, I will tell you why I remember that.

24. X Q. Explain it, for, as a matter of fact, he never owned the house that he lived in.

A. That is my impression, but I may be mistaken. My impression is that he said that. Mr. Burrough used to buy largely of coal. He was the only party that came to the office to transact business, with the exception of Mr. Sam. Emery, jr., occasionally, I believe, and Mr. Sailer, I believe once. This conversation between Mr. Albright and Mr. Burrough that evening was the first that I had ever heard of the business of the Emery Coal Co., and I was there and partially joined in the conversation, and as I was interested I listened.

25. X Q. You are not positive, then, that he said that the house he owned on Capitol Hill was the one that he lived in?

A. No, sir; I am not positive that he said that, but it is my impression that he did. Mr. Albright asked him if he didn't own real estate on Capitol Hill, and it is my impression that he said yes, he owned the house he lived in, worth $3,000 or $4,000.

284 26. X Q. At the time Mr. Burrough presented you with that statement which you have referred to, he said, in addition to what liabilities were shown on the statement, that he owed Mr. Samuel Emery $10,000?

A. It is my impression that the $10,000 was included in the statement of liabilities; that it was in that explanation of the items on that statement at the time he handed it to me.

27. X Q. That indebtedness which he said he owed to Mr. Samuel Emery, sr., does not appear on that statement, does it?

A. Not as an item; no, sir.

28. X Q. But he stated at the time he presented that that he did owe him that $10,000?

A. Some time during the conversation; yes, sir.

29. X Q. Did you ever hear any member of the firm of Langdon, Albright and Co. inquire of him if he had paid the money that he owed to Samuel Emery, sr.?

A. No, sir.

30. X Q. Did you ever hear him say to them that he had paid it?

A. Not that amount. I have heard him say that they had borrowed money from Samuel Emery, sr., when it was necessary to meet their notes, from time to time.

31. X Q. Did you ever hear him say or répresent to any of the members of the firm of Langdon, Albright & Co., that he owed them alone, and did not owe Mr. Samuel Emery, sr.?

A. The remark that Mr. Burrough frequently made in my hearing was, "We do not owe anybody but Langdon, Albright & Co."

32. X Q. That was an unqualified statement, was it?

A. It was unqualified; yes, sir.

33. X Q. And you understood from that that he did not owe Mr. Samuel Emery?

285 A. I did not understand from that that he didn't owe anybody; that was the remark he made. The impression that I received from it was that Langdon, Albright & Co. were the principal creditors; that their other indebtedness did not amount to any considerable sum.

Upon reading the above testimony the witness states that he desires the answer to 27' X Q. to read as follows:

"It is my impression that the $10,000 was included in the statement of liabilities."

WILLIAM T. HICKOK.

J. JOSEPH ALBRIGHT, a witness on the part of the complainants, having been duly sworn testified as follows:

By Mr. WILSON:

1. Q. You are a member of the firm of Langdon, Albright & Co., named in bill of complaint, and are one of the complainants in this case?

A. I am.

2. Q. State when your firm commenced dealing with Samuel Emery, senior, and state the course of business between him and your firm.

A. It began sometime in the fall of 1874, by the selling of coal to Mr. Emery. Mr. Emery always settled for the coal by his notes, I believe, in every case. Mr. Burrough generally ordered all the coal, as I remember it. At the time our business relations first commenced I was absent in Philadelphia, and Mr. Barker, I believe, sold the first coal to them when they started in business. When I came back I went down and saw Mr. Emery, senior, and Mr. Emery, junior, and Mr. Burrough; and Mr. Emery, senior, said at that time, in talking over the business, that he wanted to start them in business, or something of the kind—that is the impression I got as I remember it now—that he wanted to start the

business for them. We had a general talk on coal matters. He
286 said at that time that all notes would be signed by him, as they were for the balance of that season, and for all the next year—1875—on to the beginning of 1876—April, I believe they say in their testimony. The business was always conducted, as far I could see, by Mr. Burrough. I gave the bills always to Mr. Burrough, I believe, and he looked over them and sent me to Mr. Emery, senior, for settlement, and Mr. Emery, I know, at the time, always seemed to know very little of what was being done or what was going on; all the orders and everything came through Mr. Burrough.

3. Q. State a little more particularly there who was in charge, so far as you know, of the place of business there.

A. Mr. Burrough was; I used to always find Mr. Emery at his stone office, which was on another street, and I most always used to go there to get notes signed when he didn't come to my office. When he didn't come I used to find him at a little office on the same square near there, but it was a separate office. I think Mr. Emery and his brother both had an office there.

4. Q. Who else was concerned in the business as an employé or otherwise?

A. Mr. Samuel Emery, junior, I used to see there sometimes, and have some little talk with him, but not very much. Mr. Burrough was the one whom we had business with principally.

5. Q. From whom were orders for coal always received?

A. I cannot say that they were always received from Mr. Burrough, but I think they were; there may have been some exceptional cases. I cannot say from whom the first order was received, which was, I think, for something like a couple of thousand tons sold to them the first season, 1874. I think that order was given to Mr. Barker.

6. Q. With whom were the terms of payment arranged, prices, etc.?

287 A. The prices were arranged with Mr. Burrough; the terms were always about the same as they started in the beginning; I do not remember how that was fixed; we generally took notes in settlement which would average, I think, about three months in time. All these facts I could tell exactly by looking at the books.

7. Q. What was the extent of his dealing with you?

A. We sold him quite largely; I think about two thousand tons the first year.

8. Q. What was the extent of their purchases up to April, 1876—approximately?

A. It would be a hard matter for me to come very near it, because it was only a small portion of our entire business, but if you want that I can give you the exact amount at the next meeting, by reference to our books. We sold coal to him quite largely in 1875; the business was continued in the same way, and settlements were all made and paid up. In the spring of 1876, about the 1st of April, we were notified that Mr. Sailer was coming into the business, and I guess I talked it over previous to that with Mr. Burrough, and at the time they closed out I had some talk with Mr. Emery, senior, on several occasions, and Mr. Burrough; as I said before, Mr. Emery, senior, seemed to have very little information in regard to the details of the business.

(Mr. Dean objects to the witness testifying to what seemed.)

That was the impression it made on me. I cannot say that it was the fact, for it was based on Mr. Emery's statement to me, and that is my impression.

(Mr. Dean objects to witness testifying in regard to Mr. Emery's statement, and in regard to seeming and impressions.)

Mr. Emery stated at that time that they were doing a nice business, and it had been a profitable business, and that he thought the young
288 men could carry it on very well, but referred me for most of the detailed information to Mr. Burrough in all cases, as he was the manager and the one who was informed of the business generally.

9. Q. When was that conversation?

A. That was about the time of the change in the firm; I cannot place it nearer than that; I have no memoranda of it whatever.

10. Q. About April, 1876?

A. About April, 1876, if that was the time when the firm changed. There was quite a large stock on hand. Mr. Emery said that he had turned the business over to them, and referred me to Mr. Burrough for all detailed information of everything; that the company was strong and ought to be sound, and on that we went ahead and sold them coal. Mr. Burrough represented to me at that time that Mr. Sailer was to put about twelve thousand dollars in cash into the concern: that Mr. Emery, junior, and Mr. Burrough put in stock, all the fixtures, etc., pertaining to the business, and that the whole capital put in amounted to something like $45,000 or $46,000; I cannot place it exactly, it was not given in exact figures, because a good deal of it was represented in fixtures and stock which had to be approximated; the exact capital was never given. The business continued then under the name of the Emery Coal Company, but it was still done altogether by Mr. Burrough. When I say altogether I mean that the transactions with us were nearly altogether with Mr. Burrough. There was never anything done with any of the other members of the firm. We sold them coal quite largely all of last year—1876.

11. Q. What at that time did Mr. Emery say concerning any indebtedness of the firm to him?

A. He never mentioned that the firm owed him; it was never mentioned to me in any way except from time to time during the last year.

12. Q. I am speaking now about the time when you had the conversation.

289 A. At that time I had no knowledge of any indebtedness to Mr. Emery, senior, by the Emery Coal Company. We went on and sold the company coal largely for the balance of the season. Settlements were generally made by Mr. Burrough by note. We sold them very largely late in the fall of last year, and I asked him for a statement of their business standing, etc., which he gave to me. That statement has been given in evidence. Mr. Burrough did not tell me at that time that what they owed Mr. Emery was a portion of the capital as represented in that statement. Mr. Emery, senior, a short time after that—I could not say just when—when he spoke to me in the Citizens' Bank about the condition of the firm down there, in speaking of their having a big stock on hand, asked what I thought they would realize on their big

stock of coal on hand. There was some little conversation, and he said that they had a pretty big pile on hand, but there seemed to be enough there to pay all they owed us, or something of that kind, but nothing was said at the time about any indebtedness to him. Mr. Burrough has at different times told me that they had borrowed money of Mr. Emery; in fact, on a good many occasions he has spoken in that way. I do not remember that he ever said anything very definite about such amounts, but it was always for money borrowed to help them temporarily. He did not make very definite statements as to amounts or time. I was never informed of this other indebtedness to Mr. Emery until quite late this season—in the summer.

13. Q. To what do you refer?

A. The indebtedness which they now claim to Mr. Samuel Emery, senior. I know nothing about that.

14. Q. When and in what way were you first informed of any indebtedness to Mr. Emery, senior?

A. That I cannot state. As I say, Mr. Burrough often told me that he borrowed money of Mr. Emery, and it was on so many different occasions that I did not think much about it. They often borrowed money of us to help them on their notes; we would loan them our check for a short time.

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15. Q. When the statement which has been referred to here was made in December last, what was said as to the item of capital stock account, and what explanation was made?

A. That capital was somewhat near what was represented to me as being the capital stock when they first went into business in April, 1876, and it didn't strike me as being very much out of the way, and I do not know that I asked any questions about it. We had a long conversation that evening on general business. I have had conversations with Mr. Burrough every few days, and it is very hard to separate one from another.

16. Q. Go on and state about the latter part of your business transactions with them.

A. It ran on in that way until they advertised another dissolution, Mr. Samuel Emery, junior, going out and Mr. Sailer going out. About that time we had a number of orders in for coal from the Emery Coal Company, and there were several cargoes shipped at that time. There were three or four vessels chartered at the time, I believe, that they advertised the dissolution. After I found out that they were going out I had a long conversation with Mr. Emery, senior, in which he said that he knew but very little about the state of their affairs. I think that was somewhere near the 1st of July. I know he said at that time that Mr. Burrough would give me any information I wanted about the new arrangement, and that I could rely upon anything he said. Then I think I went away north shortly after that, and the next I heard was by telegraph that on the 15th of July there was some probability that they were going to make an assignment. There was a note which they had given us, and which we had had discounted, which came due the next day. I came down here, but did not get here until Tuesday, the 17th, when I had some conversation with Mr. Samuel Emery, senior, Mr. Sailer, Mr. Burrough, and young Emery. They said they did not know what they would do; that

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they would let us know on Wednesday. Wednesday they came up and made the assignment.

Adjourned to 2 o'clock p. m., November 26th, 1877.

NOVEMBER 26.

The examiner appeared pursuant to adjournment.
Counsel on both sides being absent, adjourned to meet by agreement.

DECEMBER 5, 1877.

Continuation of direct testimony of John Joseph Albright:

17. Q. When you were notified in the spring of 1876 that a change would be made in the firm, what, if any, information did you receive from Mr. Burrough as to the persons who were to be concerned in the new firm, and as to the title of the new firm?

(Objected to by Mr. Dean as leading.)

A. The first information I had from Mr. Burrough was that I was told that the new firm was to be Samuel Emery & Co.; that they were going to take in Mr. Sailer for a partner, and that Mr. Emery, sr., was to put in about $10,000.

18. Q. At or about that time was any order given for coal to Langdon, Albright & Co.?

292 A. In March there was a large application for coal made by Mr. Burrough; I cannot state, without looking at the books, when the order was given; I think, though, that the order was given about that same time, but of that I am not positive.

(Witness produces said application at the request of Mr. Wilson; it is offered in evidence by Mr. Wilson, and is appended hereto, marked "Exhibit L., A. & Co. No. 36.")

19. Q. What was done with that application?

A. It was sent on to Philadelphia to the Philadelphia & Reading Coal and Iron Co., for their approval.

20. Q. What action was taken thereon?

A. It was accepted.

21. Q. When was the coal covered by that application delivered?

A. I cannot say that all of it was ever delivered; part of it was delivered, I think, in April, 1876.

22. Q. Did that application cover all the coal that was delivered?

A. No, sir; all of that was not delivered, and there was some delivered later in the season, but not on that application.

23. Q. Have you no idea of how much of this was delivered?

A. I can't state without looking at the books.

24. Q. Can you not state approximately?

A. I don't think I could; I can give it to you exactly by reference to the books.

25. Q. After the date of this application what conversation did you have with Samuel Emery, sr.?

A. I can't fix the time as exactly as that; about a year ago, or about that time, we had several conversations, and it would be a hard matter for me to say which were before that application and which were after.

26. Q. What reference did Samuel Emery, sr., make to Mr. Burrough in the conversation to which you have referred?

293 A. He referred me to Burrough for information about the firm.

27. Q. Do you remember the date of that conversation?

A. I cannot fix it exactly; no, sir; I might be six weeks out if I gave a guess.

28. Q. What did Burrough say as to the manner in which the contribution of Samuel Emery, senior, to the firm was to be made?

A. I can't say that I asked him that question or that he told me.

Cross-examination by Mr. DEAN:

29. X Q. What is the J in your name for?

A. John.

30. X Q. Are you the John Joseph Albright who made affidavit to the original bill?

A. I am.

31. X Q. To whom was the coal that you sold, as described in the first part of your answer to the 2d question, charged on the books of Langdon, Albright & Co.?

A. To Samuel Emery.

32. X Q. And that was known in this bill as Samuel Emery, sr.?

A. Yes, sir.

33. X Q. Did you or not know at that time that Mr. Emery was doing business by himself without any partners?

A. I did not.

34. X Q. Had you any reason to believe that he had partners?

A. I had.

35. X Q. State what those reasons were.

A. It was stated to me at the time by Mr. Barker, who sold Mr.
294 Emery the first coal, that Mr. Emery wanted to start a business for the boys, and that all notes would be signed by him (Emery), that he would attend to the financial part of it, and that Mr. Burrough should order the coal and attend to the general business. I inferred from that that they were members of the firm.

36. X Q. I understand, then, that you say on your oath that at the time you sold Mr. Emery the coal in 1874 you believed he had partners?

A. I did.

37. X Q. Who were those supposed partners?

A. Mr. Burrough and Mr. Samuel Emery, jr.

38. X Q. Notwithstanding that all the checks and notes that you received were signed by Samuel Emery?

A. Yes, sir.

39. X Q. Did either Samuel Emery, sr., Mr. Burrough, or Samuel Emery, jr., ever state to you that Samuel Emery, sr., had any partners?

A. I cannot say whether they did directly or not, any more than I have stated.

40. X Q. You sold coal to Samuel Emery, sr., to the amount of $70,000 or $80,000, did you not?

A. I have not looked it up; I can't say without an examination of the books.

41. X Q. Was it anywhere near that amount?

A. I should think it was.

42. X Q. And you sold that amount of coal to a man, then, without knowing exactly to whom you sold it?

A I know nothing more than what I have stated in my answers.

43. X Q. In April, 1876, did you have your attention called to, or did you see or hear of, the advertisement in the paper which has been referred to in the testimony of the defendants?

A. I know of the advertisement; I can't remember exactly now whether I saw it or not.

295 44. X Q. You knew that there was an advertisement in the paper to the effect that Samuel Emery had sold out the business to the Emery Coal Company?

A. Yes; I admit that.

45. X Q. And the Emery Coal Company was composed of E. E. Burrough, Samuel Emery, jr., and C. C. Sailer?

A. Yes.

46. X Q. You knew that fact?

A. I knew that.

47. X Q. You knew that Samuel Emery, sr., was not a member of the Emery Coal Company?

A. I did not; to a certain extent I did not know, because I had been informed all along that he had put his money in. I knew that to the general public he did not appear as a member of the firm, but I always supposed that his money was in there.

48. X Q. Notwithstanding that advertisement?

A. Yes, sir.

49. X Q. You state in your answer: "Mr. Emery, I know, at the time always seemed to know very little of what was being done or what was going on." What were your grounds for stating that?

A. I think he told me that he knew nothing of the coal business, and that Mr. Burrough did.

50. X Q. Then in this answer you refer to the coal business in general and not to the particular business of Samuel Emery?

A. That is not what I intended to imply.

51. X Q. Explain what you intended to imply.

A. That is just what I did mean—that he knew very little of what was being done in the coal business.

52. X Q. Do you mean his own business or the general coal business throughout the country?

A. Their firm business.

53. X Q. On what ground did you state that he knew very little about it?

A. Because he said so.

296 54. X Q. Will you tell me when or where Mr. Emery ever said to you that he knew very little about his business?

A. I did not say his business; I say about this coal business.

55. X Q. Well, about this coal business?

A. I cannot state the particular times; it was frequently during our connection with him. We always sent to Mr. Burrough for our orders, as Mr. Emery had told us to do, and if there were any disputes in regard to the bills or anything, Mr. Burrough fixed it.

56. X Q. State, if you please, when and where Samuel Emery, senior,

ever said to you that he knew very little about the business that was carried on at the corner of 1st and B streets, and subsequently at the 6th street wharf.

A. You do not take my answer right. I do not say that he did not know about the business that was being carried on, but that he did not know about the purchasing of coal, and the ordering from us, and the details of the business. I do not say that he did not have a general idea of what was going on. I do not know whether he had or not.

57. X Q. How do you know that he did not have a general knowledge and a particular knowledge of the business carried on by him?

A. Because he always referred us to Mr. Burrough for the settlement of everything, and when we went into business he told Mr. Barker, for one (who told me), that he knew very little about the coal business, but that Mr. Burrough had been in it, and we should fill all his orders and give him credit; that he was responsible for it. He gave his health as a reason at one time, too, I remember. I cannot state exactly the time.

58. X Q. To whom was the coal charged that you sold prior to April 1st, 1876?

A. To Samuel Emery.

59. X Q. To whom was that charged on the books of the complainants which you sold subsequently to that?

297 A. I think for a short time we did not make any change in our books. The first coal after April 1st was consigned to Samuel Emery & Co.; after that it was changed to the Emery Coal Company.

60. X Q. I notice that in your testimony you sometimes speak of having sold coal to "him" and sometimes to "them;" you mean by that in each case Samuel Emery, senior, or do you mean the Emery Coal Company?

WITNESS. At what time; before April?

Mr. DEAN. Before April.

A. It was all one thing.

61. X Q. Your seventh answer is: "We sold him quite largely—I think about two thousand tons—the first year." Who does that "him" refer to?

A. Samuel Emery.

62. X Q. In your eighth answer you say that it was only a small part of your business. What proportion of your sales in Washington did Samuel Emery purchase of you?

WITNESS. When?

Mr. DEAN. From the time he commenced business until April 1st, 1876.

A. I cannot say without looking it up.

63. X Q. Did he purchase half of all that you sold here in the District of Columbia?

A. No, sir; I think not.

64. X Q. Did he purchase one-third?

A. I cannot say without looking it up; about one-third, I should think; but that was not half of our business by a good deal. By that I mean our whole business. Washington is only one branch.

65. X Q. In your eighth answer you say: "In the spring of 1876, about

the first of April, we were notified that Mr. Sailer was coming into the business, and I guess I talked it over previous to that with Mr. Burrough, and at the time they closed out I had some talk with Mr. Emery,
298 senior, on several occasions, and Mr. Burrough." Do you remember what the substance of that conversation was with Mr. Emery?

A. Yes, sir; he represented that they had been doing a good business, making considerable money, and wanted to make a change in the firm. I could not state positively whether he told me that Mr. Emery was going on or not.

66. X Q. Did he not state to you at that time that he was not to be interested any more in the firm?

A. No, sir.

67. X Q. You believed that he was still a member of the Emery Coal Company?

A. I believed he was to a certain extent, yes.

68. X Q. What do you mean by "to a certain extent"?

A. I know to the public generally he was not a member, but it was represented to us that he had put money into the firm, to stay there, to help the firm. Whether that made him a partner legally or not I cannot say. I thought it did.

69. X Q. A man has to be either in a firm or out of it?

A. That is a legal point. I do not profess to be lawyer enough to answer the legal point. I will answer on my knowledge.

70. X Q. Upon what was your belief founded?

A. That he had money in the firm.

71. X Q. As a creditor or as one of the firm?

A. I understood that his money was put in. I do not know whether that would make him one of the firm or not. That is a legal question for somebody to decide who knows more about it than I do.

72. X Q. Did you ever ask Mr. Emery to endorse any notes of the Emery Coal Company?

A. I do not think I ever did.

73. X Q. Will you swear that you never did?

A. I would not. I have asked Mr. Burrough to get Mr. Emery's endorsement; I do not know that I ever asked Mr. Emery.

299 74. X Q. To get Mr. Emery's endorsemet on paper of the Emery Coal Company?

A. Yes, sir.

75. X Q. If he was a member of the Emery Coal Company, why did you want to get his endorsement?

A. Because I could use it, as I stated to Mr. Burrough at the time.

76. X Q. For that reason alone?

A. Yes, sir; so we could use the paper here; Mr. Emery's name would give it credit.

77. X Q. With whom were the terms agreed upon for the times of payment for this coal that you sold to Samuel Emery—with Samuel Emery himself or with Mr. Burrough?

A. I do not remember.

78. X Q. You never knew until about the time the Emery Coal Company failed that Samuel Emery, senior, was a creditor of theirs for part of the purchase-money of their stock?

A. Not for that $10,000; I never knew that.

79. X Q. You remember the conversation that occurred in the office of Langdon, Albright and Company to which Mr. Hickok, your book-keeper, testified?

A. I remember a good deal; I do not know that I remember all; it was a conversation lasting a couple of hours?

80. X Q. Mr. Burrough did not tell you at that time that they owed Mr. Emery $10,000 for the purchase-money?

A. No, sir.

81. X Q. Mr. Hickok was mistaken, then, when he says so?

A. I do not think he says so. He may have said that he owed them some money. I cannot say whether he did or not.

82. X Q. Where were you when you received this telegram that you speak of in your 16th answer?

300 A. I was in Scranton, Penn'a.

83. X Q. Do you remember the day of the week and the month?

A. It was Sunday afternoon, the 15th day of July.

84. X Q. When did you arrive in Washington?

A. The Tuesday following—the 17th.

85. X Q. In the same answer you say, "I came down here, but did not get here until Tuesday, the 17th, when I had some conversation with Mr. Emery, senior, Mr. Sailer, Mr. Burrough, and young Emery. They said they did not know what they would do; that they would let us know on Wednesday." Did all four of these men say that; if not, which of them did?

A. I did not meet Mr. Burrough with them; I met Mr. Samuel Emery, junior, Mr. Samuel Emery, senior, and Mr. Sailer, in their office——

86. X Q. What office?

A. At 1st and B streets; and we talked over the matter. Mr. Emery, senior, said that he did not know what was best; that there were two ways to settle it up, and as quick as they could see Burrough they would let us know. Mr. Emery, junior, said that he would see Mr. Burrough that day, and let us know next morning anyhow; that Mr. Burrough had gone to Baltimore, and Mr. Emery, junior, said that he would go over to Baltimore and look for him that afternoon. I cannot say what Mr. Sailer said. The conversation was general.

87. X Q. Did Mr. Emery say then that he was a member of the firm of the Emery Coal Company?

A. No, sir.

88. X Q. Was the coal that was delivered under the application marked "L., A. and Co. No. 36," paid for?

A. I cannot say whether it was or not. There was some of last year's trade that ran over and was not paid for.

89. X Q. Was it settled for by notes?

A. All of last year's trade; yes, sir.

301 90. X Q. Whose notes?

A. The Emery Coal Company's, I think; I do not know that it was all the Emery Coal Company's; that transaction ran along during all the season.

91. X Q. When was the firm of Langdon, Albright and Co. dissolved?

A. It has never been dissolved.

92. X Q. Does it still consist of John Joseph Albright, William E. Barker, and Andrew Langdon?

A. No, sir; Mr. Andrew Langdon has withdrawn from the firm, as advertised on the 17th of November, 1877.

93. X Q. He was a member of the firm up to that time?

A. Yes, sir.

(The hearing was here adjourned to the office of Langdon, Albright and Co., in the Saint Cloud building, for the purpose of inspecting the books of said firm.)

Mr. WILSON (to the witness). Having referred to your books, please produce and hand to the examiner, to be identified and offered and considered in evidence, copies of all entries in your tonnage-book showing what coal was charged to Samuel Emery and what to the Emery Coal Company; also copies of your ledger accounts with Samuel Emery and the Emery Coal Company; also the bills of lading for the cargoes described in the tonnage accounts.

By Mr. DEAN:

94. X Q. Did Samuel Emery, senior, to your knowledge, ever see that paper signed "E. E. Burrough, manager for S. Emery & Co.?" (Exhibit L., A. & Co. No. 36.)

A. I do not know that he ever did.

95. X Q. Did you ever tell him that you had such a paper?

A. I do not know whether I did or not.

96. X Q. It is likely you would know it if you told him, is it not?

A. I do not know that it is at all.

302 Redirect examination by Mr. WILSON:

97. Q. What is the course of business as to the transmission and delivery of bills of lading?

A. One is kept by the shipper, one is given to the captain, one is sent to the consignee, and one comes to us.

Upon reading over the above testimony the witness states that he desires to make the following corrections:

Answer to 11. Q. By the indebtedness referred to in latter part of this answer, I mean temporary indebtedness from time to time for temporary accommodation.

Answer to 25. Q. "About a year ago" should be about April 1st, 1876.

Answer to 76. Q. Modify this answer to say that was one reason, but I can't say that it was the only reason.

J. JOS. ALBRIGHT.

W. E. BARKER, a witness on the part of the complainants, having been duly sworn, testified as follows:

My age is thirty-two years; my residence is Washington; I am in the coal business.

By Mr. WILSON:

1. Q. Were you engaged in the coal business in the city of Washington as a member of the firm of Langdon, Albright and Co. in the years 1874, '75, and 1876?

A. Yes, sir.

2. Q. State when and under what circumstances your business intercourse and trade began with Samuel Emery, senior.

A. To the best of my recollection it was in the fall of 1874; at any
303 rate it was when Samuel Emery, senior, first commenced the coal business at the corner of 1st and B streets.

3. Q. What occurred between him and said firm and you, or you as its representative, at that time concerning the purchase of coal?

A. I went to see Samuel Emery, senior, in regard to selling them coal, and gave him our prices and terms, and he gave me an order, I think, or we received an order from them, but it was from Mr. Burrough. The conversation was most all with Mr. Burrough at that time, Mr. Emery telling me that he had started the business for the boys. He said that he was not acquainted with the coal business, but that Mr. Burrough was, and had been in the business; that he (Mr. Emery) had started the business for them, and anything that they wanted we should let them have on his account; that he would see that it was paid for.

4. Q. And deliveries were begun?

A. Yes, sir; deliveries were begun then. We shipped some right after that. I do not remember just what now.

5. Q. And they were continued?

A. Yes, sir.

6. Q. How long did you remain here in this city, in connection with the business after that?

A. I think until some time about the 1st of June, 1875.

7. Q. When did you go away?

A. Then I took charge of the Harrisburg branch.

9. Q. And you remained there until when?

A. About the 1st of February, 1877.

9. Q. Were you here in February, and after February?

A. Yes, sir.

10. Q. State, if you please, what occurred between you and the Emery Coal Company, or any of the members of the firm of the Emery Coal Company, or Samuel Emery, senior, prior to the assignment.

WITNESS. In what connection?

304 Mr. WILSON. In connection with their business. You had no connection with them, of course, while you were away.

A. No; but I had during this year. I have been here during all this year since February, and have been shipping them coal.

11. Q. State what knowledge of the transactions of the Emery Coal Company with your firm you had after your return last February.

A. The business was going on smoothly and regularly all through the season. We shipped them coal during the months of May and June, 1877, and went on pleasantly until default was made in payment of a check.

12. Q. State when that occurred, and the occurrences subsequent to that, just as they happened.

A. I guess it must have been in July some time that Mr. Burrough borrowed some money from us, and gave us his check, payable about the 11th of July. That check was not paid at maturity, but it was not protested until the 13th, and we did not get notice of protest until then. I went to see him and asked him about it, and asked him why it was not

paid. He told me that he supposed that they had charged a note up to their accounts in the bank, and it did not leave money enough to pay the note and to pay the check. I asked him, then, if he could not pay this small check what he was going to do with the note falling due on Monday?

13. Q. When and where did the interview occur?

A. At Mr. Burrough's house.

14. Q. On what day?

A. On Saturday, the 14th, I think it was.

15. Q. What time?

A. It was in the afternoon.

16. Q. State the hour as nearly as you can remember.

A. As near as I can recollect, it was about six o'clock in the afternoon, or between five and six o'clock. I asked him what he was going
305 to do about his note coming due. He said he did not know whether he would be able to pay it or not; that they might have to stop.

17. Q. Give us the whole of that interview, if you please.

A. We went on to speak about the date of the note. He said it was the 17th that it was due, and I said it was on the 16th. On my return to the office I looked and found it was the 16th, so I returned to his house again on Sunday and told him it that was due on Monday, and asked him if he would be able to pay it. He said he did not know; that he was going to have an interview on Sunday with Samuel Emery, senior, and Samuel Emery, junior, and determine what they would do.

18. Q. When did you next see him?

A. I do not know that I saw him to speak to him after that until some time after Mr. Albright's return.

19 Q. On what day?

A. Wednesday, I guess.

20. Q. Did you telegraph to Mr. Albright?

A. I telegraphed to Mr. Albright on Saturday evening.

21. Q. What was said at either of these interviews about the lost notes?

A. At the first interview I think he said that he would be able to pay the note if he found those notes that had been lost; that he expected to get money on the notes that had been lost with which to pay our notes, but he had not found the notes. I do not remember just how the conversation occurred, but that came in with it.

22. Q. What notes did he speak of as having been lost?

A. A number of notes which I had seen advertised as lost. I told him I had heard of it or had noticed the advertisement, and asked him if he had got duplicates of them. He said he had duplicates for some of them.

23. Q. Repeat what he said in regard to the payment of that note and the application of those lost notes.

306 A. I asked him what he was going to do about that note. He said he did not know; he did not expect that they would be able to pay; that they had lost some notes on which he expected to realize money.

24. Q. To realize money for what purpose?

A. To take up that note of ours coming due.

25. Q. Was anything said about those belonging to Mr. Samuel Emery, senior?

A. No, sir; there was nothing said about that.

26. Do you know when you first knew of the assignment?

A. When they came to the office here and told us.

27. Q. When was that?

A. My recollection is that it was on Wednesday.

Cross-examination by Mr. DEAN:

28. X Q. At the time you sold this coal to Mr. Emery first, in 1874, did you understand that he had any partners?

A. I understood that he started the business for the boys exclusively; that he did not know much about it, but he would be their surety, and anything that they ordered he would pay for. We never received an order directly from Mr. Samuel Emery, hardly.

29. X Q. But still that is not exactly what I want. If he was starting the business for the boys, did you understand that they were his partners, or that he had the business in his own name?

A. That he had the business in his own name, but for their benefit; that is the way I understood it. The understanding was that he was going to start the boys in business; that they had not any capital, and that he would be responsible for them, and all the business was done through them.

30. X Q. All was done in his name.

307 A. Yes, sir; but through them. He never did any business only to pay the notes or give the notes in his own name; but all our contracts as to prices, quantities of coal, times of shipment and settlements were made with Mr. Burrough.

31. X Q. Did Burrough usually sign "E. E. Burrough, manager for Samuel Emery?"

A. I do not remember that there was much occasion for his signing his name; it was nearly all verbal; we would go and see him and he would come and see us.

32. X Q. All the financial part was done with Mr. Emery?

A. All the financial part was done with Mr. Emery; that is, up to the time I went away.

33. X Q. You were not here when the Emery Coal Company was formed?

A. I was not here.

34. X Q. Were you informed by your partners of the new company?

A. Yes, sir.

35. X Q. By letter?

A. No; I think that spring I was in Washington here, and I was then told of it.

36. X Q. Did you see the advertisement in the paper?

A. I did not.

37. X Q. Did your partners tell you that Mr. Emery was a member of the firm of the Emery Coal Company?

A. They told me that he was interested with them.

38. X Q. You did not see that advertisement in the paper yourself?

A. I did not.

39. X Q. And never understood the purport of it?

A. No, sir.

40. X Q. And you always regarded Samuel Emery, senior, as a member of the firm of the Emery Coal Company?

A. I have always considered him a member of the firm.

308 41. X Q. Did you ever ask him to indorse notes of the Emery Coal Company?

A. I have no recollection of *of* ever asking him to indorse any paper.

Redirect examination by Mr. WILSON:

42. Q. Did Mr. Samuel Emery, senior, ever indorse a paper of the Emery Coal Company?

A. I cannot tell you; Mr. Albright attended to the collection.

W. E. BARKER.

Adjourned to meet at Mr. Wilson's office at 2 o'clock p. m., Monday, Dec. 10th, 1877.

By consent of counsel the meeting appointed, as above, for Monday, December 10th, 1877, was passed, and no further testimony was taken in the case until the following, under the notice of June 4, 1878.

A. JOHNS, *Examiner.*

In the supreme court of the District of Columbia.

ALBRIGHT ET AL. *vs.* EMERY ET AL. } No. 5697. Eq. doc. 17.

To Messrs. ROSS & DEAN, *Sol'rs for Def'ts:*

Please take notice that we shall proceed to take the testimony of Benjamin P. Power on behalf of the complainants in the above-entitled cause, on the sixth day of June, A. D. 1878, before A. Johns, esq., an examiner in chancery, at our office, No. 637 F st. NW., commencing at one

309 o'clock p. m., and continuing from day to day, as the examiner shall direct. You are invited to attend and cross-examine the witness.

WORTHINGTON & HEALD,
*Sol's for Complainants.*

Service of above notice this 4th day of June, A. D. 1878, on us acknowledged.

ROSS & DEAN.

WASHINGTON, D. C., *June* 6, 1878.

Met pursuant to the foregoing notice.

Present, the complainant, defendant, Mr. Dean, of counsel for defendant, and Benjamin P. Power, the witness.

Adjourned to meet at same place Tuesday, June 11th, 1878, at 3 o'clock p. m.

WASHINGTON, D. C., *June* 11, 1878.

Met pursuant to adjournment.

Present, the complainant, defendant, Mr. Wilson, counsel for complainant, Mr. Dean, counsel for defendant.

BENJAMIN P. POWER, a witness for the complainant, was sworn and examined.

By Mr. WILSON:

Q. State your name, age, residence, and occupation.

A. My name is Benjamin P. Power; my residence, Baltimore; my occupation, coal agent; and my age, about fifty-two.

Q. Are you acquainted with Mr. Samuel Emery; and, if so, how long have you known him?

A. I am. I have known Mr. Emery in a business way for two and one-half years.

Q. What business relations have you had with him?

A. My first and only business relation with Mr. Emery was selling him a bill of coal?

Q. When was that?

310 A. That was in the latter part of March, 1875, My acquaintance extended from that time.

Q. Where was he then carrying on business?

A. I do not know the name of the street; but his office was located off towards the Capitol, the same place it is now. I passed by there to-day and found it the same place.

Q. Do you remember having a conversation with Mr. Emery in the spring of 1875 concerning his business, and the persons by whom it was carried on?

A. Yes, sir.

Q. State what that conversation was.

A. I frequently called at his office and met Mr. Burrough and occasionally Mr. Emery's son, but nothing definite in the way of business took place between us; and afterwards, in the latter part of March, 1875, I was there, and Mr. Emery was present and Mr. Burrough, and whilst we were in the office they gave me an order for some coal; I took the order, and, after remaining there a short time, walked out, and Mr. Emery, here present, followed me, and as we went out he closed the door of the office——

(Mr. Dean here stated that the Mr. Emery "here present" is Samuel Emery, senior.)

A. And whilst we were out there Mr. Emery, the gentleman present here, remarked to me that he had started these young men in business, and he was the responsible party. And he further stated that he had started them in business, and if they didn't make money why he would close them up as quick as he started them.

Q. What, if anything, was said at that time about his son being in partnership?

A. I do not recollect about his stating anything further than I have mentioned—his having started these young men in business; he did not mention any particular one; Mr. Emery, junior, and Mr. Burrough were in the office at that time.

311 Q. Did you have a later conversation with him on the same subject?

A. I don't recollect of any later conversation with him; I served the coal, and there was some dispute in the settlement, and Mr. Emery, jr., came over to our office in Baltimore to negotiate a settlement; he ap-

proached us as one of the firm—as one of the principals in the concern—and we dealt with him accordingly; Mr. Burrough also.

Q. In whose name was the business conducted?

A. S. Emery; I don't remember whether it was S. Emery, senior, or junior; it was S. Emery. (Witness here referred to a memorandum.) It was S. Emery. I merely have this to refer to the date.

Cross-examined by Mr. DEAN:

Q. (After having the answer read in relation to Mr. Emery's statement that he started the young men in business.) Do I understand you to use the exact words that Mr. Emery used?

A. To the best of my knowledge and belief.

Q. Did he not say that he had started in business for the young men?

A. No, sir; he said he had started the young men in business.

Q. In what way did you receive the payment for this coal?

A. (Witness here examines a memoradum.) There was some dispute about a car-load of coal, and, I think, we received this in two payments.

Q. In what way; by check, or draft?

A. That I cannot say positively; it is a possible case that the first payment was by a check paid me here, and the other possibly by draft.

Q. You don't recollect who signed the check?

312 A. I do not; I presume it was Mr. Emery, for I would not have sold the coal except on Mr. Emery's responsibility.

Q. Did young Emery, when he came on to Baltimore, say he was a partner?

A. I cannot state positively; but he approached us as a principal of that firm, and dealt with us in that way; I know, in the transaction we had in our office (although there was nothing definitely settled, except that we tried to arrive at some settlement), he spoke of himself as being a member of the firm.

Q. You say he approached you as a member of the firm; how did he approach you?

A. If a man comes into your place of business and asks about matters in such a way that you can understand he is a member of the firm; men talk differently as principals than they do as employés; a member of a firm will assume a responsibility were an employé will say he was directed so-and-so; that is the rule in careful houses, and I consider that we are one of that kind; mercantile houses of high standing would not treat an employé as they would the principal.

Q. Did Mr. Samuel Emery, jr., say to you in words that he was a member of any firm?

A. I had several interviews with Mr. Emery, jr.; without saying positively, I am inclined to think he did; I had also several interviews with Mr. Burrough about this balance of settlement, and I always approached them, understanding from them they were members of the firm, or I would not have gone near them; they always gave me to understand that they were members of the firm.

Q. Still you are not willing to say that either one of them ever said to you in terms that he was a partner?

A. Yes, sir; I am willing to say that Mr. Burrough did.

Q. On what day?

A. I cannot say the date, because I had several interviews with
313 both in reference to this balance; and I would not have approached them upon the matter if they had not given me to understand they were partners; I should have gone to this gentleman first (pointing to Samuel Emery, senior); I would not have dealt with employés.

Q. Can you fix the date within a month?

A. I suppose it was within sixty days after March 29, 1875, or maybe ninety days; you may say from the first of April, 1875; I do not pretend to say who signed the check or who signed the draft; I do not attend to the money matters of our house.

Q. Did you ever meet Mr. Emery, senior, after that?

A. No, sir; I do not think I ever did; I have seen him about the office there.

Q. Did you ever meet Mr. Emery on the cars between Alexandria and Washington?

A. I do not recollect of meeting him.

Q. And having a conversation?

A. I do not.

Q. It was in the summer of 1876?

A. I do not recollect that.

Q. Did Mr. Emery say to you at that time that these young men were partners of his?

A. He said it just as I have told it; that he had started these young men in business, and if they did not make money he would stop them just as he started them.

Q. Have you any objection to leaving this memorandum to which you have been referring?

A. I do not know that I have; I merely carried it in my pocket for a memorandum; I would rather you would take down the dates.

(Counsel for defendant here read from the memorandum: "S. Emery, Washington, D. C., 1875, March 29, 30, 31; bill of coal amounting to $1,465.83)."

Q. The goods were charged on your books to Samuel Emery?

A. Yes, sir; I understood Mr. Emery was the responsible party.

314 Last interrogatory by the examiner:

Q. Have you anything further you desire to state in this case?

A. Nothing further.

BENJ. P. POWER.

Counsel for complainants here closed their testimony.

DISTRICT OF COLUMBIA,
*County of Washington, ss:*

I, A. Johns, examiner in chancery, do certify that the foregoing depositions were taken down by me and reduced to writing in the presence and from the statements of the witnesses at the times and place designated hereinbefore; that the said depositions were afterwards read over to or by said witnesses, respectively, and by them respectively subscribed in my presence or that of my agent, the said witnesses having been first by me duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

A. JOHNS,
*Examiner in Chancery.*

*Testimony—Behalf Defendant.*

In the supreme court of the District of Columbia.

JOHN J. ALBRIGHT
*vs.*
SAMUEL EMERY. } Equity, No. 5697. Docket No. 17.

FRIDAY, *October 18th*, 1878—10 a. m.

315 Met pursuant to agreement. Present, Mr. A. S. Worthington, counsel for complainant; and Mr. Mills Dean, counsel for defendant.

Whereupon SAMUEL EMERY, the defendant, was produced, sworn, and examined on his own part and behalf, as follows:

By Mr. DEAN:

Q. Will you state when you commenced the coal business in Washington?

A. It was some time in the fall of 1874, I think.

Q. Did you have any partners at that time?

A. No, sir.

Q. Or subsequently?

A. No, sir.

Q. How long did you continue it?

A. I continued it till the 1st of April, 1876.

Q. Where did you carry on the business?

A. I carried it on at the corner of 1st and B streets northwest, and at the wharf at the foot of 6th street southwest.

Q. Under what name did you carry it on?

A. Under the name of Samuel Emery.

Q. During that time did you ever represent to Langdon Albright & Co., or anybody else, that you had any partners?

Mr. WORTHINGTON. Objected to as leading.

A. No, sir; I never did.

Q. You went out of the coal business April 1st, 1876?

A. April 1st, 1876, I sold out all my interest in the coal business.

Q. To whom?

A. To E. E. Burrough, Samuel Emery, junior, and C. C. Sailer.

Q. Under what name did these three men trade?

A. I sold out to them and they commenced business under the firm-name of the Emery Coal Company.

316 Q. Did you retain any interest at all in the firm?

A. I did not.

Q. Did you advertise, or cause to be advertised, the sale of this business to that firm?

A. I caused notice to be inserted for two or three days in three daily papers of the city of Washington.

Q. Name them.

A. The Evening Star, Daily National Republican, and Daily Morning Chronicle.

Q. Will you produce copies of those papers, or of the advertisement, and file them with the examiner?

The copies are in your possession from the Star and from the Daily Republican, and I will produce the other if it can be procured.

(By agreement between council this advertisement will be produced subsequently and filed.)

The witness is shown a copy of his answer filed in this cause, Exhibit S. E. sr., No. 1, which he identifies as a copy of the advertisement.

Q. Did you subsequently have any conversation with the plaintiffs or any of them in regard to this sale?

A. I did.

Q. Just state as near as you can when and where these conversations occurred, and what they were.

The WITNESS. Shall I state the substance of the conversation?

Mr. DEAN. Yes; and which one of the firm they were with, and when and where.

A. The first conversation was with Mr. Langdon, the head of this firm. I was engaged on New York avenue, and he passed by and saw me, stopped, and told me he had, I think, a bill of lading that had come from New York, that was endorsed wrong and sent back from New York to the Emery Coal Co. for a different endorsement—to be paid there. He said that if I could endorse that it would save him the trouble of going to the wharf to see the parties there. I told him I had no further in-
317 terest in the coal business; that I had sold out all my business to these parties under the firm-name of the Emery Coal Company.

Q. And that you could not endorse it?

A. Yes; that was the first conversation.

Q. When was that?

A. That was, I think, in the month of April, soon after I had sold out to them.

Q. In 1876?

A. Yes. I was doing some work for Dr. Sowers, on New York avenue, at the time, and he came along there and asked me that question.

Q. Did you have any subsequent conversation with him in regard to that?

A. In the course of the next two months I met Mr. Langdon in the Citizens' Bank, on 15th street. He asked me if I would do a favor for him; I told him I would if I could; he said he would like me to use my influence with the Emery Coal Company to induce them to change their bank account from the Metropolitan Bank to the Citizens' Bank, as he was a director of the Citizens' Bank, and could more readily get their notes discounted there if they would keep their account there. I told him that I would use my influence; that I would see Mr. Burrough, who attended to the financial affairs of the firm, I believed, and tell him what he said. Then he asked some questions with regard to my selling out to them, and I gave him a full statement of how the transaction was made; how I sold out, what I took in payment for selling out, and everything in connection with the transaction between the Emery Coal Company and myself—

there at the counter of the bank on 15th street. I afterwards mentioned this conversation to Mr. Burrough, and told him what Mr. Langdon wanted, and he told me the reasons why he could not change; that he had large dealings with J. W. Thompson, and he wanted, at Thom-
318 son's request, to keep his account there, and he said he would see Mr. Langdon in connection with it, and I suppose he did.

Q. Did or did you not in both of these conversations state distinctly to Mr. Langdon that you had no interest in the firm called the Emery Coal Company?

Mr. WORTHINGTON. Objected to as leading.

A. I did state distinctly, and told him how I received my pay—in notes, as I have testified. I can't give the dates now; but I have testified before, I think, that there were three or four notes that I took in payment for the amount I sold out for.

Q. Did you have any conversation with other members of the firm in regard to the selling out?

A. I do not recollect any particular conversation, but I have met Mr. Albright frequently, and he was fully aware that I had sold out—that I had no further interest in it—by different conversations, but I cannot call any particular one to mind.

Q. Mr. Albright testified that you seemed to know very little about the business carried on from the fall of 1874 to April, 1876. I will ask you if you did not know all about the business?

Mr. WORTHINGTON. Objected to as leading.

A. I did.

Q. You knew all the coal that was bought?

A. I had authorized Mr. Burrough, as my agent, to make purchases.

Q. Did he ever buy any without your orders?

A. He never bought any without consulting me with regard to what I wanted in the business to continue that business.

Q. The business was carried on entirely under your supervision?

Mr. WORTHINGTON. Objected to as leading.

319 A. Entirely under my supervision. I received all the money that was paid in as the proceeds of the coal, and I paid all the bills; no one else paid them unless I gave the money and took a receipt in my name to somebody.

Q. How about selling on credit?

A. If I sold on credit and took notes the notes were drawn to me.

Q. But were any sales made on credit without your knowledge and consent?

A. No, sir.

Q. And no coal ordered without your previous order?

Mr. WORTHINGTON. Objected to as leading.

A. There was no coal ordered without consultation with me about it. Mr. Burrough and my son were employed by me in the business.

Q. How were they paid?

A. I agreed to pay them $900 a year each for their services.

Q. Did you ever state to Mr. Albright, while you were carrying on that business, that your health was poor, and for that reason you could not give it your personal attention?

Mr. WORTHINGTON. Objected to as leading.

A. No, sir; I did not.

Q. As a matter of fact was your health poor during that time?

A. My health for the last thirty or forty years has been as it is now. I have been able to attend to business, and ever have been, and, except some three or four attacks of rheumatism, I have never been sick within the last thirty or forty years, except for an hour or so, or something of that kind. I never had a fit of sickness in my life.

Q. Were you ever sick during that time so as to keep you from business as much as a week at a time?

320 A. I think not. I dropped a stone on my foot one day, and partly cut my big toe off, and I don't know but I was in the house nearly a week with it during that time.

Q. Did Mr. Albright ever request you to endorse the notes of the Emery Coal Company at any time?

A. Yes, sir; he asked me to do so.

Q. Were you present when Mr. Power testified before Mr. Jones in the case?

A. I was.

Q. Do you remember the purport of his testimony?

A. I do.

Q. State what conversation you had with Mr. Power in regard to the coal business, and when it was.

A. Mr. Power came to my office—whether by request or not I could not say; at any rate he was there, and I arranged with him—through Mr. Burrough, I think (he spoke for me), for the purchase of a few car-loads of coal.

Q. When was this?

A. That was in the fall of 1874. After I had decided how much I wanted and he had agreed to furnish it and stated the price, he started to go out; I stepped out with him, and outside the door told him that I wanted him to understand that that was my business; that I was the proprietor of that business, and that he would look to me for pay.

Q. That was in the fall of 1874?

A. That was in the fall of 1874. He sent the coal and got the money.

By Mr. WORTHINGTON:

Q. (Interposing.) That was before the change of the firm?

A. That was a short time after I commenced business in 1874. Mr. Powers also stated that he received pay, he believed, by my check for the amount.

By Mr. DEAN:

Q. Did you tell him at that time or at any other time that you were carrying on business for the boy—Mr. Emery, junior—and Mr. Burrough?

321 A. I might have told him that I was carrying on business to give them employment. I did start the business to give them employment; that is, my son was working for me, and had been working for me; my son-in-law had got out of business in Baltimore, and I sent for him and proposed to start the coal business if he would come down here and work for me, and he agreed to do it, and I started it and set them both at it.

Q. But with no intention of making them your partners?

Mr. WORTHINGTON. Objected to as leading.

A. Never any intention whatever of that kind.

Q. Was it your intention at the time you commenced the business to turn the business over to them?

Mr. WORTHINGTON. Objected to as leading.

A. No, sir; it was not.

Q. When did they first propose to buy you out, and what brought about the proposal?

A. Some time in the winter of 1875–'6 they spoke about buying out my interest in the coal business. They had had conversations with Mr. Sailer, and he had agreed with them if they would buy me out that he would put in a certain amount of money and take hold with them and carry on the business.

Q. Had you any intention previous to that time of turning the business over to them?

A. No, sir; I had no intention of turning it over to them previous to that time.

Q. Did you ever at any time hold out Burrough and Samuel Emery, jr., as your partners?

Mr. WORTHINGTON. Objected to as leading.

A. Never.

Q. Now, Mr. Emery, state, as near as you can, concisely, the transaction you had with Burrough in regard to those notes that were lost by Mr. Burrough, and how they came to be turned over to you.

The WITNESS. With regard to those notes given as collateral?

322 Mr. DEAN. Yes.

A. I think it was perhaps in May, 1876; I have not the notes here and cannot tell the date, but he came to me and asked me to loan him my notes.

Q. When was that?

A. In 1876.

Q. 1877, wasn't it?

A. No, sir; 1876. (After pausing.) It was 1877. In May, 1877—I think it was May—he came to me and asked me to loan him my notes. He wanted to get some notes that he had given Albright, and he hadn't the money, and he asked me to loan him my note for twenty days, first, for a certain amount—$3,500 I think it was. In ten days from that time he came and asked me to loan him my note again, for $3,750, for ten days, and in the mean time told me where he thought he would get money to meet them; I lent him the notes as an accommodation. When the two notes matured, the same day Mr. Burrough sent for me. I went down to his house; he was sick in bed; he said that he had been disappointed in getting the money to meet those notes, and asked me if I would not renew them; I told him I would, as he could not pay them. Well, he proposed that I renew them for ten days for $2,500, and that at the expiration of that time he would take it up; that I renew the other for thirty days for the $3,250 or $3,750—I can't say which now—and he would give me a voucher which he was going to get from the officers of the House of Representatives for the amount of coal that he had been putting in there. He said it was enough to meet that note, and he would

give me that to hold to get the money on to meet that note. The ten days expired and he paid the first note according to his agreement; and about the time that he paid that note he came to me and said that it was impossible for him to give me that voucher; that he had to meet other notes and he must use that money. He said if I would wait until the
323 first of the month (of July), he had a good many notes due him for coal that he had sold to different parties, and he would get those notes and turn them over to me, together with some accounts that he had against parties, when settled the 1st of the month, in place of this voucher that he was to give me for the payment of that note. After the 1st of the month he went and got those notes from different parties and endorsed them over to me; and in his travelling, going out to the brick company's place——

Mr. WORTHINGTON. (Interposing.) Do not state what you do not know of your own knowledge.

The WITNESS. I only know what he stated to me. Mr. Burrough came to me then and told me that in going to the brick company's place of business he had lost his pocket-book containing the notes; that he had advertised its loss, offering a reward to any person that would bring it to my house. Two days after that a party brought the book back to my house, and I gave him $10, according to Mr. Burrough's request. I opened the pocket-book and found the notes there (the advertisement said what notes were in the pocket-book), and from the Emery Coal Company. I sent word to Mr. Burrough; he came there and took those notes and gave them to me, except two or three of which, while the notes were lost, he had gone to the parties and got duplicates, and these two or three he was to destroy if he found the pocket-book containing the notes. He handed the duplicate notes over to me with the rest as collateral for the thirty-day note that I gave him for either $3,250 or $3,750, I cannot tell which now.

Q. That is briefly a statement of the transaction in regard to the collateral?

A. That is the transaction with regard to that. He gave them to me according to agreement, because I consented to let him use what he first offered to give me to hold, the voucher on the officers of the House.
324 Q. Can you state, Mr. Emery, whether you know that the public generally, and the coal trade specially, knew of your having sold out to these gentlemen?

A. I know they all knew it.

Q. Name, if you can, any man in the coal business who had a personal knowledge of it besides the plaintiffs.

A. I can name those that told me that they knew it, both in the business and out of the business.

Q. Name some of them.

A. I will name J. C. Heaston for one. J. C. Heaston is an agent for the coal companies. He has told me that he was fully aware that I had sold out my interest in the coal business, and when it was done.

Q. Anybody else?

A. I cannot give the first name—Mr. Jones, an agent of Philadelphia, has told me since that he was fully aware that I had no interest in the business.

Q. Any bank officers?

A. Mr. Charles Bradley has told me the same thing; F. Tenney has told me the same thing.

Q. F. Tenney, proprietor of the National Hotel?

A. Yes. He applied to me for coal, and I told him that I had nothing further to do with the business. He told me that he recollected that very well. Mr. Bradley said that he knew very well that the Emery Coal Company's notes came to his bank for discount, and I being in there he asked me if I had any interest in that, and I told him I had not; that I had sold my interest out to that firm. He will testify to that any time that it is necessary.

Q. During the existence of the Emery Coal Company was it ever brought to your knowledge that anybody claimed that you were a member of that firm?

A. Never, to my knowledge. I never had any idea that anybody thought so until this suit was instituted or commenced. I gave all the public notice that I supposed was required. I don't know now that I know what a legal notice is, but I gave notice as far as I could
325 through the papers, and I told *told* everybody that spoke to me about it. I didn't make it a business to go around and tell them

Adjourned till Tuesday, 22d inst., at 10 o'clock a. m.

TUESDAY, *October* 22*d*, 1878—10 a. m.

Met pursuant to adjournment.

Present, Mr. Mills Dean, of counsel for defense. Mr. Worthington sends word that he is unable to attend to-day, and requests a postponement until Thursday, the 24th instant, at the same hour, whereupon the session is adjourned to that time by agreement of defendant's counsel.

H. H. ALEXANDER,
*Examiner.*

THURSDAY, *October* 24*th*, 1878—10 a. m.

Met pursuant to adjournment.

Present, Mr. Worthington, of counsel for complainants, and Mr. Mills Dean, of counsel for defendants.

Whereupon Samuel Emery, sr., before being cross-examined, desires to say, in correction of a certain portion of his testimony given at the last session, as follows:

The WITNESS. I would like to say, in correction of my former testimony in reference to the question as to my health, that in the fall of 1875 or the winter of 1876—some time that fall or winter—I was not sick, but I had a kind of a nervous affection, and my doctor told me that I was doing too much business; that I ought to curtail my business. I never said anything about selling out to anybody until that time that I proposed to sell out my coal business. The question was asked me whether I ever told
Mr. Albright so; I cannot recollect of telling him so, but I prob-
326 ably might have, and did tell him something about it. That is all the correction I wanted to make. I said my health had always been good.

(Defendant's counsel here offers advertisement referred to at the last session, which is filed herewith, marked "Exhibit A.")

Cross-examined by Mr. WORTHINGTON:

Q. At the time the firm of the Emery Coal Company was formed in 1876 where was your son, Samuel Emery, jr., living in town?

A. I think he was boarding with me; I can't say positively.

Q. Was he married then?

A. No.

Q. Did he board with you generally up to the time of his marriage?

A. Yes.

Q. He states that at that time he was indebted to you; is that true?

A. He was indebted to me to a small amount previous to that.

Q. He states that he was indebted to you to a considerable amount?

A. I do not know what he calls a considerable amount; I think he owed me about $300 that I had advanced him previous to that.

Q. At that time was your son the owner of any property, so far as you know?

A. Not that I know of.

Q. How old was he?

A. He was about 23 or 24; I think he was 27 this last August.

Q. He was then 23 or 24?

327 A. Yes, sir.

Q. He was, I believe, the youngest member of the new firm?

A. Yes.

Q. Had he before that time been engaged in any business?

A. Not for himself that I recollect of.

Q. How had he been engaged?

A. He had been engaged with me for a number of years.

Q. As a clerk?

A. As assistant or clerk. He did anything I had for him to do in the stone-yard in connection with my stone business. He commenced to learn his trade there with me, and he had an affection that bothered him about work, and the doctor told me that I had better not let him work at the stone-cutter's bench, and after that I had him to collect bills and attend to the work generally that I could not attend to.

Q. Had he ever been employed in any other capacity except that which you have just stated?

A. I think not.

Q. By anybody?

A. I do not know; not that I know of. I do not recollect now. I cannot say now whether he had or not.

Q. So far as your recollection goes, what is the fact?

A. He had been away from me; at one time he went to California.

Q. Before April, 1876?

A. Yes; he went to California, and was there in the neighborhood of a year; I do not recollect exactly how long.

Q. Was he self-supporting then, or did you aid him?

A. He was self-supporting. That was part of the money that he was owing me that I lent him to go to California with. I think so; I won't be certain. I cannot say for certain that he was less than twenty-one when he went out there. My brother was in California, and he

328 took a notion to go, and he went out. I advanced him money to go out with.

Q. So far as you know, up to April, 1876, he had never been the owner of any property?

A. I think he had a lot of ground down in the eastern section of the city; I don't know how it stood, but I know that he had one that he wanted me to purchase after they went into business. Whether he ow'ed it previous to that I cannot say. I did not purchase it, and I do not know what he ever did with it.

Q. Do you know what that lot was worth?

A. No, I don't know; I can't say.

Q. Well, now, about Mr. Burrough. Had he previous to the formation of the Emery Coal Company been engaged in busines independently?

A. Oh, yes.

Q. Where?

A. He was engaged in business in Baltimore, and failed there in business.

Q. He came here and made a fresh start?

A. No; he had been engaged in the coal business over there with his father.

Q. After his failure?

A. Yes; his failure was some ten or twelve years ago, and he was engaged after that, until he came to Washington, with his father in the coal business, either as clerk or partner.

Q. Had he any means?

A. He had no means that I know of when he came here?

Q. What was Mr. Sailer's financial standing here in April, 1876?

A. I do not know what his financial standing was. I have been told by the members of the firm that he put in between six and seven thousand dollars when the Emery Coal Company was formed.

Q. You understood that at the time?

329 A. No; I have been told that he put in cash to that amount.

Q. Weren't you told about it at the time?

A. I don't know whether I was told before or after. He proposed, if they could buy me out, he would commence with them and put in so much money. Whether he put in all he said he would put in I do not know, but I was told afterwards that he had put in between six and seven thousand dollars cash.

Q. When was it first proposed, and by whom, to call the new firm the Emery Coal Company?

A. Mr. Burrough called my attention to it first.

Q. When was that?

A. After they had bought me out. We made arrangements that the books should change from the 1st of April. They got their books and started the new books the 1st of April. I know that; and previous to the time we got the thing fairly squared up and made the advertisement of the sale the subject was broached what they should call the company.

Q. Broached by Mr. Burrough to you?

A. By Mr. Burrough to me.

Q. He proposed to call it the Emery Coal Company?

A. Yes, sir.

Q. And what did you say?

A. I cannot say what I did say in answer.

Q. Have you no recollection whatever?

A. I think I said I would rather it would not be called the Emery Coal Company, as I was engaged in other business there, and I think the answer he made was that there was an Emery in it, and that they thought it would be better; that the people had got acquainted with the location there, and perhaps it would be better to have the name in the firm, and that they could do it without any trouble, because there was one Emery in the firm.

Q. What did you say to that?

330 A. I do not know that I said anything particularly for or against it. I left it to themselves to do as they chose.

Q. Had any other name for the firm been proposed before this, to your knowledge?

A. Not that I know of.

SAM. EMERY.

Sworn to and subscribed before me.

H. H. ALEXANDER,
*Examiner.*

EDWARD E. BURROUGH, a witness of lawful age, produced, affirmed, and examined on the part of the defendants, as follows:

By Mr. DEAN:

Q. Are you one of the defendants in this suit?

A. I believe I am.

Q. Please give, in as few words as you can, a statement of your connection with Samuel Emery, sr., in the coal business in the Emery Coal Company, beginning with the time that you first had any connection with Samuel Emery, sr., in reference to the coal business.

A. I was employed by Mr. Emery to come here in the last part of the summer or early in the fall of 1874, to clerk for him in the coal business, and continued in that position for about a year and a half.

Q. On a salary?

A. On a salary. At the expiration of that time I formed a copartnership with Charles C. Sailer and Samuel Emery, jr., and bought out the books, accounts, good-will, and fixtures of Mr. Samuel Emery, sr., in the coal business, and continued the business under the firm-name of the Emery Coal Company, and that business was continued until the 18th of July, last year, when we made assignment for the benefit of our creditors.

331 Q. About what time was it that the Emery Coal Company was formed?

A. The Emery Coal Company was formed on the 1st of April, 1876; that is, it took possession of the property at that time.

Q. Did you commence business at that time?

A. Yes, sir.

Q. About that time did you have any conversation with the plaintiffs, Langdon, Albright & Co., or any of them, in regard to the Emery Coal Company?

A. The first conversation in reference to our purchase of Mr. Emery's interest and a change in the business took place in the fall before that. Mr. Emery was in rather bad health, and his family physician advised him

to give up all active participation in business. That was the first conversation that was had; at that time I spoke to Mr. Albright about it, and I think in the month of February I informed Mr. Albright that Mr. Sailer would come into the business—either February or March, I am not sure which—I think it was in February—and that we should buy Mr. Emery out on the 1st of April.

Q. What did you state to Mr. Albright, or any other member of that firm, in reference to Samuel Emery's being a partner.

A. Nothing; I never made any statement of the kind to them. On the contrary Mr. Albright frequently asked, during the existence of the Emery Coal Company, for Mr. Emery's endorsement on our paper to help them get a discount at a low rate of interest.

Q. Did you ever say or do anything during the existence of the Emery Coal Company to lead Mr Albright or any other member of that firm to believe that Samuel Emery was a partner in the coal company?

Mr. WORTHINGTON. Objected to as leading.

A. I did not.

Q. How long did Mr. Sailer remain a member of the firm?

332 A. Thirteen months and a half.

Q. After Mr. Sailer went out of the firm did you still continue business under the name of the Emery Coal Company?

A. I did.

Q. And bought coal from the plaintiffs?

A. I did.

*R.* (Submitting a paper to witness.) What is that?

A. (After exam'ing same.) This is a paper that was given to me by Langdon, Albright & Co., I think, in the last part of June, 1877—I am not sure whether it was May or June—which they wanted me to sign.

*R.* Did they want anybody else to sign?

A. Yes; they wanted to get Mr. Emery to sign as a guarantor?

Q. What Mr. Emery?

A. Mr. Samuel Emery, sr.

Q. Which one of the company gave it to you?

A. I do not recollect which one.

(Defendants' counsel here offers said paper in evidence, which is filed herewith, marked "Exhibit B.")

Q. Did you apply to Mr. Emery?

A. No, sir; I refused to make any such arrangement, and stated that I could get all the money that I wanted on Mr. Emery's endorsement without them. I always made that statement to them, when they made application for his endorsement as guarantor.

Q. Did they ever ask you to get Mr. Emery to endorse the paper of the Emery Coal Company?

A. Several times.

Q. Did you sometimes get it for them?

A. Never; and for the reason that I stated—thatwe could always get Mr. Emery's paper discounted without their name on it.

Q. So that, when you did get Mr. Emery's endorsement, you always got it discounted for your own account?

333 A. Yes.

Q. Did Mr. Langdon ever speak to you in reference to chang-

ing the account of the Emery Coal Company from the Metropolitan National Bank to the Citizens' National Bank?

A. It is too long ago for me to say whether I can recollect that or not. Some of the concern asked me to do it, but I do not know whether it was him or not, and I do not recollect the circumstances.

Q. You saw Langdon, Albright & Co. very frequently during your connection with the Emery Coal Company, did you not?

A. Yes.

Q. Did they, or any one else of that firm ever say anything to you by which you could understand that they claimed Samuel Emery, sr., to be a member of that firm?

Mr. WORTHINGTON. Objected to as leading.

A. No.

Q. Did not Langdon, Albright & Co., and the individual members of that firm know exactly who composed the firm?

Mr. WORTHINGTON. Objected to as leading and incompetent.

A. They did; all of them.

Q. Did you have conversations about the matter?

A. Just before we formed the firm of the Emery Coal Company, and afterwards, we were actually more intimately connected with Langdon, Albright & Company, in every sense of the word, than we were with Mr. Emery. We acted under them to supply the small trade of the city of Washington—small merchants—and received commissions from them; and they were as familiar with the business as we were.

Q. When did you know that they claimed Samuel Emery to be a partner?

334 A. I never knew it until after this suit was commenced.

Cross-examined by Mr. WORTHINGTON:

Q. Mr. Burrough, Samuel Emery, jr., has testified that prior to the formation of the Emery Coal Company, as well as afterwards, he paid little attention to the business personally. Is that your recollection?

A. Yes; he did not pay much attention to it; he did not pay as much as he ought to have.

Q. He always neglected it, did he?

A. I suppose you might say that he neglected his business.

Q. Is he not rather a wild young man?

Mr. DEAN. Objected to. (To the witness.) Mr. Burrough, you are not bound to pronounce your opinion of your brother-in-law.

A. I will answer that question. I do not know anything about it; that is, what I know about the subject is nothing; if I gave anything it would be a mere opinion, and that would not be evidence.

Q. Prior to April 1st, 1876, what evidence had he given of being a good business man, and what was his standing in the community so far as you know?

A. He was formerly a clerk for me in Baltimore, and was as good as the ordinary average of boys there. From that time until I came to Washington I saw very little of him. He lived here and I lived in Baltimore. (Question repeated.)

A. I have very little knowledge on the subject; I am not competent to give an opinion, except hearsay.

Q. Well, I want hearsay as to his standing in the community; what was it?

A. I do not know; I was not a resident here, and did not know what this community thought of him.

335 Q. I refer to the 1st of April, 1876, after you had been in business with him, according to your own showing, for over a year. What was his standing then as a business man in the community?

A. I do not suppose he had any standing as a business man; I never heard of his being in any business on his own account.

Q. Now, at that time, what was Mr. Sailer's standing in the community as a business man?

A. Mr. Sailer' reputation at that time, as far as I know, was that of a very hard working and industrious man.

Q. And wasn't it that of a man of some means?

A. Yes; a man of some means.

Q. What was his age at that time—about?

A. I do not know; I have no idea what Mr. Sailer's age was. I never asked the question.

Q. Was he a middle-aged, young, or old man?

A. I should imagine that he was somewhere from 30 to 50 years old; I don't know where.

Q. What is your age?

A. My age at this time is 37, nearly.

Q. Now, will you please tell us why it was, that in a firm composed of Mr. Sailer, yourself, and Mr. Samuel Emery, jr., the name of the firm was the Emery Coal Company; why was that name selected?

A. I selected that name myself, simply because I wanted to make an innovation in the style. I had been connected with the concern known as the Burrough Brothers Manufacturing Company, and had connection with the Reading Hardware Works and other concerns, and I liked the style.

Q. Well, if style was simply the object, why did not you call it the Sailer Coal Company, or the Burrough Coal Company?

336 A. Because we wanted the benefit with the trade of the Emery name. There were a good many people dealt with us on account of Mr. Emery's connection here; we had a good many customers who came there because Mr. Emery was in it.

Q. Do you mean Mr. Emery, sr.?

A. I mean that the Emerys are known here; that Mr. Matthew G. Emery and Mr. Samuel Emery are well known here in town, and a great many of our customers came there to buy coal from us on that account.

Q. I believe the testimony as it stands is a little indefinite as to what sign was on the coal wharf occupied by the Emery Coal Company at the time of the formation of the firm. What do you remember about that?

A. At the wharf we moved the office on the principal side of the street. and any old sign-work that was on there was more or less covered up by shedding and a change in position. We never put any additional signs up there.

Q. Well, what sign was there prior to the change in the firm—prior to April, 1876?

A. I am not sure that there was anything there except "Emery's Wharf," or "Emery's Coal Wharf," and that sign was blown down and

never was put up again before we moved. It was blown or torn down, I forget which.

Q. When did you move?

A. We moved the office, I think, in April.

Q. Of what year?

A. It was either March or April, 1876; the year that the Emery Coal Company took possession.

Q. And after that there was no sign on the wharf whatever?

A. I do not think there was any sign there.

Q. While the Emery Coal Company was in business were you in the habit of getting endorsements from anybody except Samuel Emery, sr.?

337 A. Yes; we used to go nearly every month to Langdon, Albright & Co., and get them to get from three to ten thousand dollars' worth of paper discounted, to help us out; we bought from them with that understanding.

Q. Did you get endorsements to any considerable amount from anybody except the plaintiffs and Samuel Emery, senior?

A. No.

Q. What proportion of the coal purchased by the Emery Coal Company during its existence was purchased from these plaintiffs?

A. Our contract with them was to buy all, as far as possible.

Q. Do I understand that you bought about all the coal you did buy from Langdon, Albright & Co.?

A. Yes, very nearly; that is, all the anthracite coal. The other kind of coal we did not.

Q. Did you buy very much of the other kind of coal—the soft coal?

A. Yes.

Q. From whom did you get that?

A. The Maryland Coal Company, principally. I have bought as high as three thousand tons at a time from the Borden Mining Company. Our purchases from the Maryland Company were as high as ten or twelve thousand tons a year.

Q. Who represented this company in their transactions with you?

A. The president of the company, Mr. Henry Loveridge.

Q. Of what place?

A. New York.

Q. Did you buy from them on credit?

A. Yes.

Q. How do you fix the date when you were asked by one of the plaintiffs to have Samuel Emery, sr., sign the guarantee, Exhibit B?

A. I can only fix it approximately and from memory; I cannot say in any other way.

338 Q. Then may you not be mistaken by a few weeks or months as to the date?

A. I cannot be much out of the way; I can come within thirty days of it.

Q. How?

A. My impression is it was given to me at my house on Pennsylvania avenue, but I am not sure of that; but that is the recollection that I have; I just merely know by my memory.

Q. How does the place of the occurrence fix the date?

A. Because I do not think any of them ever came there until I bought out Mr. Sailer, or had bought out the concern, and the application was made to me individually. I bought out the interest of Mr. Sailer and Mr. Samuel Emery, jr.

Q. Well, was it, then, some time after the publication of the newspapers of the notice that Mr. Sailer was no longer a member of the firm?

A. Well, it was about that time.

Q. Can you say whether it was before or after?

A. It was after.

Q. How do you remember the date of that publication?

A. I do not; I am not sure that I can even fix the date approximately by that notice.

Q. Is it not your best recollection that you were asked to get this guarantee signed after public notice had been given that Sailer had withdrawn?

A. I cannot say about that; it was after the actual dissolution, on the 15th of May, of which Langdon, Albright & Co., were notified before the advertisement; they knew of the dissolution on the 15th of May, before it appeared in the newspapers.

Q. How do you know that they knew that before?

A. Because I told them.

Q. Did you tell them verbally, or how?

339 A. Verbally; in fact I bought Mr. Sailer and Mr. Samuel Emery, jr., out by Mr. Joseph D. Albright's advice; he spoke of purchasing Mr. Langdon's interest, and he said that I ought to get rid of my partners as he did of his.

Q. When did you notify Mr. Langdon that you had bought Mr. Sailer out?

A. We talked of it two or three months before it was consummated; I used to be in their office once or twice or three times a week, and it was talked over nearly every time I was in there, and when it was consummated I told them.

Q. How soon after it was done?

A. The very day that it was done; it was partly at their suggestion that this advertisement was not made until later.

Q. What reason was given for that?

A. Because they thought it might affect our credit, and might prevent them from getting some of our paper discounted?

Q. What was the objection to Mr. Sailer's being a member of your firm?

A. He did not seem to understand the business; he did not seem to understand a mercantile business.

Q. Well, how had Samuel Emery, jr., conducted himself as regards attending to the business after the formation of the Emery Coal Company?

A. He did not give it much personal attention.

Q. Notwithstanding which you retained him as a partner when you got rid of Mr. Sailer. Why was that?

A. I bought him out under an agreement; that he agreed to go out at the same time and was advertised out at the same time; I had no settlement with him; he was absent from the city, I believe, at that time for about a month; he went out to the Black Hills prospecting, or something of that kind, and when he came back we had some difficulties, I believe; the concern closed its doors shortly afterwards—made the assignment.

Q. Was he in town when Mr. Sailer was bought out?

340 A. He knew of Mr. Sailer's going out.

Q. Was he in town?

A. I cannot say; I do not recollect exactly; he went away about that time.

Q. If he was in town why did you not buy him out and settle with him at the same time that you bought Sailer out, and get rid of both of them?

A. I do not think he was in town; I cannot say.

Q. Who signed his name to the advertisement notifying the public that Sailer had withdrawn?

A. That I do not recollect.

Q. You do not recollect whether you signed it or not?

A. I do not recollect who signed it; I do not know that any of us signed the advertisement.

Q. Haven't you seen a copy of the advertisement?

A. Yes; but in making up an advertisement it is not necessary for a man to sign it himself; I think it was signed by one of our book-keepers or clerks; the advertisement was read over and agreed on in rough copy, and somebody made a fair copy and took it to the newspaper office, and who did that I do not recollect now, but it was not myself, I know.

Q. Well, with your knowledge, to which you have testified, of the character of Samuel Emery, jr., why did you take him as a partner in the Emery Coal Company in April, 1876?

A. Because I thought there was money enough in the business for us both; I thought it would pay.

Q. That does not explain why you took into your business as a partner a man of whom you have said that he paid very little attention to business, and who had no business standing.

A. That is your assertion, not my answer.

Q. I am stating what you have testified.

A. I have not testified that; I testified that I did not consider that I was competent to say whether he had any standing in the community or not.

341 Q. Then you say that you have not testified that he had no standing in the business community?

A. I have not.

Q. You have not testified that prior to April, 1876, he did not pay much attention to the business?

A. I have testified to that.

Q. Now, I ask you why you took into your firm a man who paid little attention to the business?

A. I have told you because I thought the business would pay us.

Q. Wouldn't it pay one better than two?

A. Yes; but I did not suppose that I could run the business by myself; I expected him to pay attention to the business.

Q. You expected him to make a change in that regard?

A. I expected him to pay attention to his business.

Redirect by Mr. DEAN:

Q. Mr. Emery, jr.'s, conduct while he was in the employ of his father

was not such as to make any reasonable man decline to go into business with him, was it?

A. I should not think it was; he did not attend closely to business; but when we proposed to start on our own account he said that he expected to pay more close attention to business than he had before, and we all expected it; when I say "all" I mean Mr. Sailer and myself.

E. E. BURROUGH.

Sworn to and subscribed before me.

H. H. ALEXANDER,
*Examiner.*

WILLIAM E. HODGE, a witness of lawful age, produced, sworn, and examined on the part and behalf of the defendants as follows:

342 By Mr. DEAN:

Q. Where do you reside?

A. In Washington, sir.

Q. What is your business?

A. Clerk.

Q. By whom are you employed?

A. Mr. Samuel Emery, sr.

Q. How long have you been employed by him?

A. Since the 16th of May, 1877.

Q. Are you acquainted with Langdon, Albright & Co., the individual members of that firm?

A. I am acquainted with young Mr. Albright.

Q. John J. Albright?

A. I think those are his initials—John J. Albright.

Q. Did you have any conversation with him in reference to the Emery Coal Company? If so, state when and what it was.

A. Well, I had a conversation with Mr. Albright in reference to Mr. Emery. He asked me if Mr. Emery was connected with the Emery Coal Company. I told him "No."

Q. When was it and where was it?

A. That was at the Baltimore depot. I think it was May or June, 1877.

Mr. SAMUEL EMERY, Senior (interposing). 1876.

Mr. Worthington, counsel for the plaintiffs, requests the examiner to note that Mr. Dean says in the presence and hearing of the witness that he has made a mistake of a year in his testimony.

The examiner is requested by counsel for defendants to read over the testimony to witness, which the examiner does.

By Mr. DEAN:

Q. Is that correct, Mr. Hodge, as the examiner has it down?

A. Well, I could refer to dates, Mr. Dean, and tell by the dates
343 of some transactions I made on that day—by referring to some books at the office. I know some of the transactions that occurred that day are very familiar to my mind.

Q. Look at those books, and at the next meeting be prepared to fix the day.

A. Yes, sir. I can tell by some transactions made on that day.

Q. By whom were you employed before you entered the employment of Samuel Emery, sr.?

A. I was in the employ of the Emery Coal Company.

Q. When did you go into their employment?

A. I went into their employment in April, 1876.

Q. Who composed the firm of the Emery Coal Company?

A. Mr. E. E. Burrough, Mr. Samuel Emery, jr., and Mr. C. C. Sailer, I think were his initials.

Q. Was there any secrecy about who composed that firm?

A. No, sir; not that I am aware of.

Q. It was generally known around among the people who dealt with them who composed the firm, was it?

A. Yes, sir.

Q. (Submitted to witness an affidavit dated 24th of July, 1877, filed in the original suit.) Is that your signature?

A. Yes, sir; without it is a good counterfeit.

Q. Have you any doubt about it?

A. No, sir; I have no doubt about it.

Q. Do you recollect signing it?

A. Yes, sir.

Q. Read it through, and say whether you remember the conversation alluded to in that affidavit.

A. (After reading same.) Yes, sir.

Q. Just state, as near as you can, where it took place and what was the substance of it.

344 A. It took place at the office, at the corner of 1st and B streets, northwest. A gentleman by the name of Barker or Barbour, I don't know which, came in with Mr. Albright. He was talking about business, and the coal business principally, and the name of the Emery Coal Company came up. Young Mr. Albright asked Mr. Emery if he would endorse for them, or be responsible. Mr. Emery said "No." They asked the standing of the business. Mr. Emery said that from all he knew they were good.

Q. Could you not state when that conversation took place?

A. Well, it was some time in June, sir.

Q. The affidavit says that it took place on or about the 20th of June, 1877.

A. I think it was on or about the 20th of June.

Q. At the time when this affidavit was made, the matter was more fresh in your mind?

A. Yes, sir.

Q. Did Mr. Albright address Mr. Emery there as if he believed he was a member of the Emery Coal Company?

A. No, sir.

Q. From the nature and tenor of that conversation was not it out of the question that they could claim that Mr. Emery was a member of this firm?

Mr. WORTHINGTON. Objected to as leading.

A. They could not claim it at all, from the tenor of the conversation.

Cross-examined by Mr. WORTHINGTON:

Q. At the time of this conversation, in June, 1877, referred to in your affidavit, were you aware of the fact that an advertisement had just been published in the newspapers notifying the public that the Emery Coal Company after that date would be composed of Burrough alone?

345 A. I have an indistinct recollection of an advertisement being in the paper, sir, but I cannot bring it to mind. It did not interest me directly, and I did not pay much attention to it.

Q. Can you say whether this conversation occurred before or after that publication?

A. I really cannot say, sir.

Q. Well, now, is it not entirely consistent with everything that was said at that conversation that Albright and Barker referred to the Emery Coal Company, as it was announced to the public this firm was composed in this advertisement?

A. Well, I don't know what brought Mr. Albright there, or the business, or anything else. I am only repeating what I heard them say.

Q. When they mentioned the Emery Coal Company, you do not know, then, whether they referred to the Emery Coal Company as it was composed before June 14th or afterwards?

A. They spoke about the Emery Coal Company; that is all I know.

Q. That conversation occurred on or about the 20th of June?

A. Yes, sir.

Q. How do you fix the date?

A. By some transactions Mr. Emery had.

Q. What transactions?

Q. I believe he made an accom'odation to certain parties that day.

Q. You are pretty certain about the date; that it was on the 20th of June?

A. I will have to go over certain memorandums that I have to swear positively.

Q. I refer to the conversation which was fixed at the 20th of June, 1877, in your affidavit. Didn't you look at these dates before you made that affidavit, so as to fix the dates as nearly as you could?

346 A. I looked at the date; yes, sir.

*A.* And you then fixed that as the nearest date?

A. Yes, sir.

Q. When Mr. Emery, senior, at that time declined to become responsible for the Emery Coal Company, did Mr. Barker or Mr. Albright say as to whether they would furnish coal without that endorsement?

A. No, sir; at least I did not hear them say.

Q. What was the tenor of that conversation; that they would or would not?

A. I did not hear them say much about it.

Q. They asked him for his endorsement, and he refused to give it?

A. Yes, sir.

Q. Did they ask for his endorsement or for a guaranty?

A. They asked him if he would agree to be responsible, and he declined.

Q. Now, about the conversation with Mr. Albright when he asked you if Mr. Samuel Emery, sr., was a member of the firm of the Emery Coal

Company; you say you can fix that date by reference to some transaction?

A. Yes, sir.

Q. What transaction?

A. That was a transaction in which I made a collection for some coal that I sold.

Q. Collection from whom?

A. I do not remember the lady's name; she lives up on Grant Place.

Q. What is the connection between that transaction and the conversation with Mr. Albright which enables you to fix the date?

A. Well, I collected the money on that day. I know the date that I collected the money from the lady, and there was a young man with whom I was going to Baltimore, and I went down to the train with him, and I met young Mr. Albright there; he was on the platform, and while
347 we were waiting for the train to start out, for some cause or other Mr. Albright got to talking about matters and things.

Q. And this collection is on the books?

A. Yes, sir.

Q. And it will show the exact date on which Mr. Albright asked you this question?

A. Yes, sir; almost to the half hour.

Q. In what book does that appear?

A. That appears in one of the books at the office?

Q. One of the books of the Emery Coal Company?

A. No, sir; one of the books of Mr. Samuel Emery, sr.

Q. Can you recall the name of the person from whom this collection was made?

A. No, sir.

Q. Was it a lady?

A. Yes, sir.

Q. Where did she reside?

A. On Grant Place, or Grant street, Washington.

Q. At the next meeting will you be kind enough to produce the book which contains the memorandum?

A. Yes; or rather I will produce the date.

Q. I would like you to produce the book?

A. If Mr. Emery does not object; it is merely a little memorandum or cash-book.

Mr. EMERY. I do not object, if it is in existence.

Q. Are you sure that this book is in existence?

A. It may be destroyed or it may be lost; it is a book that we don't take any account of after we get through with it at night.

Q. Can you, from your recollection, fix the date of your conversation with Mr. Albright at the depot any nearer than you have already done?

A. No, sir; not without reference to what I have already told you.

Q. Can you tell whether it was in May or June?

A. I cannot without reference to that transaction.

348 Q. It may have been early in May; it may have been late in June?

A. I can't swear about it until I see about that entry.

Q. Supposing the entry not to exist, how nearly can you positively fix the date?

A. I cannot fix the date of the month.

Q. Can you fix the month?

A. I don't know that I can; it was either in May or June.

Q. You are positive of that?

A. Yes, sir.

Q. And that is all you can say?

A. Yes, sir.

Redirect, by Mr. DEAN:

Q. Was it prior or subsequent to the conversation when Barker was present?

A. Prior.

The witness having, by request of counsel, gone out and searched for and found the book referred to in his testimony, appears and produces the same, and states, from reference to it, that the conversation with Mr. Albright at the depot was on the 9th of June, 1877.

Mr. DEAN, counsel for defendants, here admits that the date of the conversation, which the witness states was between Mr. Albright, Mr. Barker, and Mr. Emery, was in June, 1877, instead of June, 1876, as Mr. Emery at first supposed.

WM. E. HODGE.

Sworn to and subscribed before me.

H. H. ALEXANDER,
*Examiner.*

349 ALBRIGHT ET AL. *vs.* EMERY ET AL. } No. 5697. Eq. doc. 17.

*Complainants' testimony in rebuttal.*

WASHINGTON, D. C., *Thursday, Nov. 6th*, 1878.

Met pursuant to notice, but, owing to necessary absence of counsel, adjourned to 10 a. m. to-morrow.

FRIDAY, *Nov. 7th*, 1878.

Met pursuant to adjournment.

Present, Mr. Worthington, for complainants, and Mr. Dean, for defendants.

CHARLES C. SAILER, a witness for complainants in rebuttal, having been duly sworn, testified as follows:

By Mr. WORTHINGTON:

1. Q. At or about the time of the formation of the Emery Coal Co., in April, 1876, what, if any, conversation did you have with the other members of that firm with reference to its name?

A. I do not recollect distinctly what was said about it.

2. Q. Do you not remember anything about it?

A. I know some one of the firm proposed it; that is all I recollect about it. I told him that it was immaterial to me what name was given to it, or something to that purport, I think. I don't know that I can say much about that. I don't recollect much about it.

3. Q. Do you remember whether or not it was at one time proposed to call the new firm "Samuel Emery and Co.?"

350 A. I think something was said about letting it go under the old name.

(Mr. Dean objects to this testimony as not being in rebuttal of anything that the defendant has testified to.)

The WITNESS. I think all that I know about that, as far as my recollection serves me, is that Mr. Burrough said something to me about that, and I think he said Mr. Emery, sr., rather objected to that.

4. Q. Objected to its going under the old name?

A. Yes, sir; I think, if my memory serves me right, something of that kind was said, but I could not swear positively about that; still, it strikes me there was something of that kind said; those things, of course, I cannot hold in my mind; I did not expect there was ever anything coming out of it.

5. Q. Of the three persons who were published to the world as composing that firm, was not Samuel Emery, jr., the most unimportant member?

(Mr. Dean objects to the question for the same reason as above.)

A. That I could not say anything about; I could not say who was the important one, or the most important one; there might be a difference of opinion about that.

6. Q. Was he not the youngest member of the firm?

A. Yes, sir; he was the youngest member of the firm, but sometimes the youngest member of the firm is the best man; I have seen it so.

7. Q. In your opinion was he the best man in this case?

(Question objected to by Mr. Dean.)

A. I could not say about that; I could not say who was the best man, or the worst man.

8. Q. Was his name given to the firm because he was the best man, or the most important man, or for what reason?

A. No; I do not recollect much about what occurred at the time.

351 I suppose the name was given to the firm because it had been in Samuel Emery's name, and it was published in the name of Emery, I suppose, to hold as much of the trade as possible. I suppose that was about the sum and substance of it.

(Mr. Dean objects to the answer.)

9. Q. Do you remember having any conversation at that time with Samuel Emery, sr., about that matter?

The WITNESS. About which matter?

Mr. WORTHINGTON. About retaining the name in order to keep his customers.

A. No; I don't know that I do; I say that I suppose; I don't swear that that was the case; but it would look rather natural that that was the reason why it was kept in the name of Emery.

10. Q. You have testified that you expected Samuel Emery, sr., to pay the notes that were given to you for your interest in the firm of the Emery

Coal Co. What reason was there for his becoming responsible for those notes?

(Question objected to by Mr. Dean as not being in rebuttal of any testimony offered by the defendants.)

A. My reason for that is, that about the time I was to sell out to the Emery Coal Co., Mr. Edward Burrough went to Baltimore, and after he got to Baltimore he telegraphed back to me that he could not do anything there towards getting security on the notes; I don't know that he said "getting security," but "in that matter," or something to that effect, meaning that he could not get security on those notes there.

11. Q. Your notes?

A. Yes, sir; and he asked me to go to Mr. Emery, sr.; I went to Mr. Emery in his stone-yard and asked him if he would go on the notes, or showed him the telegram. He said he did not wish to go on the notes as —I can't tell the exact words, that I know of—but, as I understand it, he did not want to go on the notes because he wanted Ed. to push his
352 collections closely; I think those were the words that he used, and the excuse that he made to me, I think; "But," he says, "if they cannot meet those notes when they come due, I will help them out."

(Mr. Dean objects to this evidence, as the witness has testified on this subject in his examination-in-chief, and because it is not in rebuttal of anything offered by the defendants.)

Q. What I want to find out is whether there was any, and, if so, what, reason for Mr. Emery making this promise to you. Why should he agree to help out the payment of these notes, and why did you go to him expecting him to do so?

A. Mr. Burrough sent me a telegram from Baltimore asking me to go and see Mr. Emery.

Q. At the time of the formation of the new firm, in April, 1876, did you have any conversation with Mr. Emery, sr., in reference to the contribution which you expected to make to the firm?

(The question is objected to by Mr. Dean, because it assumes that there was an old firm.)

A. I cannot say as to that; I do not recollect these things. I might have done so, and might not. There was some conversation between him and I, or between Mr. Burrough and I; I could not swear as to which one. There was something said about what I was to put in the firm.

Q. Did you have any conversation with either of them at that time with reference to the security for the money which you put in the firm with Burrough and Samuel Emery, junior?

A. No, I do not think I had. I do not recollect of having.

15. Q. Did you not know at that time that neither Burrough nor Samuel Emery, jr., was responsible pecuniarily?

A. I knew that they represented that Mr. Emery had loaned them some money.

353 16. Q. What did they say about it?

A. They said that he had loaned them some $10,000, I think.

(Objected to by Mr. Dean, as not being in rebuttal.)

The WITNESS. I could not swear that, of course, because I did not see the money paid and never saw any papers in regard to it; it is only what they told me.

17. Q. Mr. Emery loaned them $10,000 for what purpose?

A. To go into business, I suppose; I could not say what purpose.

18. Q. I am asking you what they said. What did they say about this $10,000 matter?

A. I could not say exactly what they said. I didn't expect this thing to come up. You could not recollect two or three years back.

19. Q. What did they say to you at that time about the fixtures and appurtenances generally for carrying on the business? Who owned them?

A. I suppose the Emery Coal Company owned them after they bought him out.

20. Q. Bought whom out?

A. Mr. Emery, sr.

21. Q. Did you pay anything for your share of them?

A. I put in over $6,000.

22. Q. Was it the understanding that that, or any part of it, was to be paid to Samuel Emery, sr., for the fixtures or appurtenances?

A. I do not know; I do not recollect as to that.

23. Q. You cannot recollect any more distinctly than you have stated what was said about that $10,000 advance of Mr. Emery, sr.?

A. No, I do not recollect anything particular about that. They represented that they had put $10,000 in the business, I think, or something to that effect.

24. Q. Did Samuel Emery, sr., himself say anything to you about this $10,000 advance?

354 A. I think he has at different times, but I could not swear positively.

25. Q. What did he say?

A. I do not recollect what he said. I suppose this story that I have told you before—that they represented that their father had loaned them $10,000 for the business; I do not know which one; probably both of them has.

26. Q. Were you in Washington when the Emery Coal Company was dissolved by the withdrawal of yourself and Samuel Emery, jr.?

A. I suppose I was; I have not been out of it much.

27. Q. Was Samuel Emery, jr., himself here?

A. I do not know whether he was or not at that time; I could not say; I think he was; I think he had been away, probably, or was going away. I do not recollect positively about that.

(Cross-examination waived by defendants' counsel.)

C. C. SAILER.

JOHN JOSEPH ALBRIGHT, a witness on the part of the complainant in rebuttal, having been duly sworn, testified as follows:

By Mr. WORTHINGTON:

1. Q. Do you know Mr. Hodge, who was clerk to Mr. Emery in 1877?

A. I do.

2. Q. Have you read his testimony in reference to a conversation with you at the Baltimore & Ohio depot, on the 19th of June, 1877?

A. Yes, sir.

3. Q. What is your recollection about that matter?

A. I don't remember of ever having held the conversation.

355 4. Q. Do you know whether you were in Washington on that day?

A. I was.

5. Q. Did you leave town on that day?

A. I did not; at least I can find nothing to show that I did; I wrote letters from the office here on that day.

6. Q. How about the day after?

A. I was here the day before and the day after and for several days.

7. Q. Have you also read his testimony in regard to a conversation which you and Mr. Barker had with Mr. Samuel Emery, sr., at his office on or about the 20th June, 1877?

A. Yes, sir.

8. Q. What was the occasion of your going there, and what was the conversation?

A. I can't remember just what the occasion was; I think we were in that part of the city, and we stopped in, as we often did, and found Mr. Emery there, and got to talking about matters generally, and inquired about Mr. Burrough and the new arrangements that had just been advertised in the paper. Mr. Emery said he could not give us much information; that Mr. Burrough could tell us everything, and what he said we could rely on, or words to that effect.

9. Q. What, if anything, was said at that time about Mr. Emery, sr., guaranteeing or being responsible for the debts of Burrough upon future deliveries?

A. I think Mr. Emery said he would not be responsible for them. I can't remember whether I asked him the question outright, or how it came about; but he gave that impression. We made up our minds when we went out of the office that we did not care to sell Mr. Burrough any more coal on his order without a guarantee of some kind.

(Mr. Dean objects to the answer.)

10. Q. When was it first intimated to you by Mr. Samuel Emery, sr., that he would not be responsible for the coal furnished to the Emery Coal Co.?

356 (Question objected to by Mr. Dean, as assuming that he never was responsible.)

A. That is the first conversation of the kind, I think, that I ever held with him; the first time I ever asked him anything of the sort.

11. Q. When did anything first occur to cause you to doubt his responsibility in the matter?

A. About that time; about that time we were informed that he claimed to be a creditor of the firm for the original purchase-money or money put in.

12. Q. It appears from the evidence that you shipped coal to the Emery Coal Company on the 15th, 16th, 18th, and 19th days of June, 1877. Do you remember whether these shipments were made before or after Mr. Emery, sr., declined to be responsible for coal delivered?

A. Those shipments were made before this conversation; remember that I do not place this conversation at the 20th of June; it was either about that time or later.

13. Q. What is your recollection as to the date, as nearly as you can fix it?

A. It was fully as late as that, and I am inclined to think it was a little later.

14. Q. Why?

A. I was here, I know, on the 4th of July, and I went away on the day after or the second day after (either the 5th or 6th of July), and it was a very short time before I went away.

15. Q. When was the coal ordered which was shipped on the 15th, 16th, 18th, and 19th June?

A. I cannot say without reference to the orders. May I look at that list you have there?

Mr. WORTHINGTON. Certainly you can look at it to refresh your memory.

(The witness refers to Exhibit B to the original bill.)

A. I think all of this order was given at one time; they gave
357 rather a large order about that time, and I think all this shipment was on that order; it was some time before the 1st of May, I should judge from that notice—some time before it was shipped.

16. Q. Can you tell us about how long before these shipments of the latter part of June were made you had contracted with the vessels to take them?

A. No; I cannot tell; they generally charter a vessel something like from four days to a week ahead, and sometimes longer ahead than that, and the vessels are loading at the wharf; it depends upon the rapidity with which the coal comes down.

17. Q. Please inform us whether any coal was delivered to Burrough or the Emery Coal Co. after that conversation with Mr. Emery, sr., when he announced that he would not be responsible.

A. No, sir; there was not.

18. Q. When did you become aware of the fact that Mr. Sailer had withdrawn from the Emery Coal Co.?

A. I think the first notice I had was the day it was published in the paper; whether Mr. Burrough showed me the advertisement or said he was going to put it in the paper I cannot say; I know I was surprised at its being dated back at the time when I first saw it.

19. Q. Have you read what Mr. Burrough said about your conversation with him concerning Mr. Sailer's withdrawal?

A. Yes, sir.

20. Q. What is your recollection about that?

A. I don't remember saying anything about Mr. Sailer's withdrawal to him; he spoke several times about Mr. Emery, jr., leaving the firm.

21. Q. Are you quite sure that you did not know of the purpose of the withdrawal of Mr. Sailer until the day the advertisement was published?

A. It was either that day or it may have been a day before. I think he showed me the notice before it was put in the paper.

358 22. Q. Are you sure that it was not more than a day before this?

A. No, sir; it was a day or two before; it was not as far back as it was dated, because I was surprised at the time to see it dated back.

23. Q. About the time the Emery Coal Co. was formed did you have any conversation with any of the members of the same regarding the reason for calling it the Emery Coal Co.?

A. Yes, sir; Mr. Burrough several times spoke of the style of the new firm; first he talked of making it "Samuel Emery & Co.," and made one application for that name; afterwards he decided to change it to the "Emery Coal Co.," and spoke of wanting to keep the name of "Emery" in the name of the firm.

24. Q. Did he say why he wanted the name of Emery in it?

A. On account of the reputation of Mr. Emery.

25. Q. Now, was that what he said?

A. I cannot give the conversation in exact words, but that is my impression.

26. Q. Can you give the substance of what he said in that regard?

A. Yes, sir; that was the substance of it.

27. Q. Mr. Burrough also stated something about the Emery Coal Co. acting as agents for Langdon, Albright & Co. in selling their coal on commission; what are the facts about that matter?

A. I don't know whether you would regard it as an agency or not; there are a number of small dealers in Washington who cannot buy a full cargo, who have not the wharves and have not the capital, and we agreed at one time to allow——

28. Q. Who?

A. The agreement was made with Mr. Burrough to allow the
359 company a small drawback on all sales made to small dealers who could not buy a full cargo of us, so that we could get some of this trade which had ordinarily gone to the railroad in single car lots; but it did not apply to any trade that controlled wharves or those who were in the habit of buying full cargoes from wholesale shippers; it never was a recognized agency or advertised as such in the business.

29. Q. As I understand that, the substance of the arrangement was that the coal was delivered in one lot on the wharf, and they distributed it to small dealers, and you allowed them something for that?

A. They had to sell at a very small margin to small dealers in order to enable them to sell again, and in order to get that trade we made a drawback on the regular price.

30. Q. Was that all there was of it, that there was a drawback on the regular price of coal which they were to sell to these small dealers?

A. That is all.

31. Q. And you sold that to them for less than the ordinary price?

A. Yes, sir.

32. Q. Was that all there was of it?

A. Yes, sir; that is all there was of it; it was done to increase our tonnage.

33. Q. Mr. Burrough has testified that it was at your request that the publication of Mr. Sailer's withdrawal from the firm was postponed; that you requested it on account of wishing to have the paper of the Emery Coal Co. discounted, or something to that effect; what are the facts about that matter?

A. I never made any such request.

34. Q. Are you sure of that?

A. Yes, sir; the fact is it made no difference where I had the paper discounted; Mr. Sailer was not known, and the discount was made on our own credit.

360 35. Q. Where did you usually get discounted the notes which the Emery Coal Co. gave you from time to time?

A. At different places; do you want me to name the banks?

36. Q. What I want to get at is whether the discounts were made in Washington or elsewhere?

A. I believe occasionally we had some discounted here, but a very small portion; our firm get very few discounts in Washington.

37. Q. And at what bank were those discounts obtained usually?

A. The Citizens' National Bank.

38. Q. Is that where you kept your account?

A. I kept my individual account there.

39. Q. Is that where Langdon, Albright and Co. kept their account?

A. No; we never kept an account in Washington.

40. Q. Upon whose credit were the discounts obtained at the Citizens' National Bank?

A. On mine or Langdon, Albright & Co.'s; at least I presume so; I gave them the paper and they took it; they never refused any paper that I offered with my name on for the reason that the paper was not good.

41. Q. Were you in Washington about the time the assignment to Ross and Dean was made by the Emery Coal Co.?

A. I was.

42. Q. About the time that assignment was made did you have occasion to see the quantity of the coal on the wharf or in the yard belonging to the Emery Coal Co.?

A. Yes, sir; I saw it the day of the assignment or the day before; I was away until the day or the day before the assignment.

43. Q. Were you down there just before this suit was brought, when the teams were hauling it away?

A. I was not there myself.

361 Cross-examination by Mr. DEAN:

44. X Q. You have previously to this testified that you asked Mr. Emery's endorsement on the Emery Coal Co.'s paper, have you not?

A. I think I testified that we did once ask it.

45. X Q. For the reason that you could make better use of the paper?

A. For the reason that the paper could better be discounted. I once told the Emery Coal Co. that my line of discounts was pretty full, and I requested that they get our paper discounted and give us the cash, in order to save us from getting the discounts. They said they did not know about that, or something of the sort, and then it was proposed that Mr. Emery endorse the Emery Coal Co. paper, and we endorse it, and that they should try and get that paper discounted, and get the cash to give us. At times our discount line was very heavy.

46. X Q. You did not ask Mr. Emery's endorsement so that you could use the paper?

A. I do not think I ever did that; I might have done so in one instance for paper in this city; I cannot answer as to that exactly. As for paper to be used away from here, I never wanted it, for I could get the paper discounted, for there was nobody known in it anyhow but us. There was a small amount got here on my own individual account; we never

kept a firm account here. I may have asked it once or twice for that purpose.

47. X Q. Are we to understand from the testimony given here to-day that you regarded Mr. Samuel Emery, sr., as responsible for all the coal you sold to the Emery Coal Co. from April, 1876, up to the time of the failure of that company?

A. I have before testified my view of the matter—that we re-
362 garded that Mr. Emery, sr., had put money into the firm not as indebtedness; that we understood that to the outside public he did not appear as a member of the firm. Whether that made him responsible or not to us I do not know; I thought at the time that it did.

48. X Q. You regarded him, then, as a member of the firm?

A. Yes, sir; to that extent.

49. X Q. Notwithstanding the fact that you saw the advertisement that appeared at the time the Emery Coal Co. was formed?

A. Yes, sir.

50. X Q. You saw the advertisement (Exhibit D to original bill) at the time it appeared?

A. Yes, sir.

51. X Q. In your conversation with Mr. Emery, when you asked him if he would be responsible for the coal, what did you say to him?

A. I do not say that I asked him outright if he would be responsible for the coal.

52. X Q. At that conversation that you testified to did you say anything to Mr. Emery about his name not being signed to this advertisement (Exhibit D to original bill)?

A. No, sir; I do not think I did.

53. X Q. You sold coal, then, to the amount of over $100,000 to men who were dece'ving the general public in regard to their partnership?

A. No, I do not say that; I do not think it was any business of the general public as long as they did not ask credit of any one who wanted to sell them coal.

54. X Q. Do you remember preparing a form of guarantee for Mr. Emery to sign, guaranteeing to pay for coal sold to Mr. Burrough?

A. Yes, sir; I sent one to Mr. Barker.

55. X Q. Where were you when you sent that to Mr. Barker?
363 A. At Scranton, Pa.

56. X Q. What date was that?

A. It was some time after the 5th of July, 1877.

57. X Q. You say you declined to sell any coal to Mr. Burrough after you had asked Mr. Emery and he had declined to become responsible for it?

A. I do not say that.

(At the request of Mr. Dean the examiner read the 9th direct inter'ogatory and the answer thereto.)

58. X Q. So you deny positively that you had the conversation that Mr. Hodge swears to, at the Baltimore & Ohio depot?

A. I do not deny that I had a conversation. I will say that I do not remember meeting him at all, and I have no recollection of any conversation with him whatever at the Baltimore and Ohio depot at any time.

59. X Q. But still you will not swear positively that you did not?

A. I will not swear that I did not have a conversation with him, because I know him, and I may have met him, and may have talked to him, but I have no recollection of any such conversation.

J. JOSEPH ALBRIGHT.

WM. E. BARKER, a witness on the part of the complainants in rebuttal, having been duly sworn, testified as follows:

By Mr. WORTHINGTON:

1. Q. Have you read the deposition of Mr. Hodge in reference to a conversation between Mr. Albright and yourself and Mr. Emery, sr., about the 20th June, 1877?

Yes, sir.

364 2. Q. What was the occasion of your seeing Mr. Emery at that time; do you remember?

A. I do not remember what occasion there was for our going there; I remember being there.

3. Q. What was the substance of the conversation as you remember it now?

A. Mr. Albright had the conversation with Mr. Emery which I heard, though I do not remember it distinctly. The substance of it was, that inasmuch as Mr. Burrough was going to carry on the coal business alone after that that Mr. Emery was not going to be responsible for coal that Mr. Burrough might purchase.

4. Q. What intimation had you had before that time that Mr. Emery, senior, would not be responsible for the coal furnished to the Emery Coal Company?

A. I had had no information that he would not be responsible.

5. Q. Down to that date?

A. Down to that time.

6. Q. What coal did Langdon, Albright & Co. furnish after you got that information?

A. They did not furnish any.

7. Q. When did you first learn of Mr. Sailer's withdrawal from the firm of the Emery Coal Company?

A. About the time the notice appeared in the papers.

8. Q. Was it before or after the notice was published?

A. I do not think I knew of it until the publication.

9. Q. Who called your attention to the notice in the paper?

A. I do not recollect; I guess I saw it myself.

10. Q. Before this conversation in June, 1877, about which Mr. Hodge testified, had you supposed Mr. Emery, sr., to be responsible for the coal delivered to the Emery Coal Company?

A. I had considered him responsible for the whole of the coal.

365 11. Q. For what reason?

A. From the fact that he told me at one time when I first sold him coal that he would be responsible, and that was my impression all the way through.

12. Q. When you first sold him the coal you sold it to Samuel Emery?

A. It was shipped in the name of Samuel Emery—sold to him through Mr. Burrough.

(Mr. Dean objects to the above testimony of the witness as being cumulative and not in rebuttal of any testimony offered on the part of the defendants.)

Cross-examination by Mr. DEAN:

13. X Q. When was this that Mr. Emery said he would be responsible?

A. That was when Mr. Emery first started the business. That is about the only conversation I had with him.

14. X Q. He paid you for all the coal you sold him in the name of Samuel Emery, did he not?

A. Yes, sir.

15. X Q. Since the failure of the Emery Coal Company have you sold any coal to Mr. Samuel Emery?

A. Yes, sir; since the failure we have.

16. X Q. You are selling them coal now in lots?

A. We sold him coal when he started again, after, as he says, buying out the Emery Coal Company.

17. X Q. You mean after buying the effects of the concern at the receiver's sale?

A. I do not know what it was. After the Emery Coal Com-
366 pany had made an assignment, Mr. Samuel Emery, sr., resumed business, and we then sold him coal. We never refused to sell him coal.

18. X Q. And you sell it to him now in the name of Samuel Emery, do you?

A. That is what he calls it.

W. BARKER.

ANDREW LANGDON, a witness on the part of the complainants in rebuttal, having been duly sworn, testified as follows:

By Mr. WORTHINGTON:

1. Q. Did you take any active part in the business of Langdon, Albright & Co. in the spring and summer of 1877?

A. No, sir.

2. Q. The business was managed by your partners?

A. By Mr. Albright and Mr. Barker.

3. Q. When did you first learn that Mr. Sailer had withdrawn from the firm of the Emery Coal Company?

A. By the advertisement in the paper.

4. Q. Did you see that advertisement yourself, or was your attention called to it by somebody else?

A. I think I saw it myself.

5. Q. Had you or not considered Samuel Emery, sr., responsible for coal delivered by your firm prior to that time?

A. I always supposed him to be.

6. Q. Was it upon conversations you had with him or upon what was stated to you by your partner?

A. I never had any conversation with him upon the subject.

7. Q. Then it was based entirely upon what your partners told you?
367 A. Yes, sir.

Cross-examination by Mr. DEAN:

8. X Q. Do you remember meeting Mr. Emery on New York avenue, between 13th and 14th streets, and asking him to endorse a bill of lading?

A. I remember meeting him there, but I do not know why I should ask him to endorse a bill of lading.

9. X Q. Because the endorsement had been improperly written, and you wanted to have it written properly.

A. I do not remember anything about that; I do not know what he could be required to endorse a bill of lading for.

10. X Q. Mr. Emery testified that he met you on New York avenue while he was putting up steps at Dr. Sowers' house, and you requested him to endorse a bill of lading which had been improperly endorsed, saying if he would do so it would save you the trouble of going or sending to the Emery Coal Company's office at the wharf, and that he replied that he had nothing to do with the Emery Coal Company and could not make the endorsement.

A. I remember meeting him there, but I do not remember a word of the conversation that occurred at that time.

11. X Q. Do you remember requesting him to have the Emery Coal Company change their accounts from the Metropolitan Bank to the Citizens' National Bank?

A. Yes, sir.

12. X Q. Do you remember his reply to that?

A. He said something to the effect that the boys were running the business, and he would speak to them about it.

13. X Q. Did he or did he not say that he was not a member of the firm and had nothing to do with their business?

A. I do not think he did.

14. X Q. Did he not give you a full statement of how he had sold to them and what had been paid?

368 A. No, sir; he did not.

15. X Q. You are positive about that?

A. Yes, sir.

16. X Q. Where did this conversation occur about changing the bank account?

A. On the steps of the Citizens' National Bank; I can give you the circumstances of the conversation if you want them.

Mr. WORTHINGTON. Oh, yes; go on and give your explanation.

A. That day I has just come out from a directors' meeting where a piece of paper of the Emery Coal Company, I think, with Mr. Samuel Emery, sr.'s, endorsement, was brought for discount, and declined, on the ground that the Emery Coal Company kept no account in the bank; I met Mr. Emery on the steps and asked him why he did not keep an account there and he said he would speak to the boys about it; I then told him of this piece of paper being declined for the reason that they kept no account there; there was very little passed in the case; I do not think we stood there two minutes the whole time.

By Mr. DEAN:

17. X Q. Did you see the advertisement that appeared about April, 1876, announcing the formation of the Emery Coal Company, which advertisement was signed by the partners?

A. I think I saw such an advertisement, but I could not say anything about the date, or anything about it.

18. X Q. Did you see an advertisement where Samuel Emery announced that he had sold out his business to the Emery Coal Company?

A. I cannot distinctly recollect of anything particular about the advertisement; I remember seeing an advertisement some time ago in regard to the Emery Coal Company, their dissolution, &c., but as to what they were I am not clear at all.

369 19. X Q. Was that the only part of the transaction in regard to which you have a distinct recollection—that conversation on the steps of the Citizens' Bank?

A. That conversation and the one where I met Mr. Emery on New York avenue are the only interviews that I remember having with Mr. Emery at all.

20. X Q. And your recollection about other matters touching the Emery Coal Company is indistinct?

A. Entirely so, for, as I have stated, I paid no attention scarcely to the business; when I spoke to Mr. Emery I was speaking in the interest of the Citizens' National Bank, and not in the interest of Langdon, Albright & Co.

21. X Q. My question was directed to the fact that your memory was defective on all these points except one. How is your memory? Have you a good memory or otherwise?

A No, sir; not first rate; my health, as my friends know, has been very poor for the last four or five years, and for that reason I have given very little attention to business.

22. X Q. And your memory is defective?

A. It is at times.

Redirect-examination by Mr. WORTHINGTON:

23. Q. Do you think that your memory is so defective that if Mr. Emery had communicated to you the fact that he was not responsible for this coal you would have kept on allowing your firm to deliver it to these irresponsible parties at the rate of thousands of dollars' worth per month?

A. I do not think I should; I think I should have notified them if I received any such information.

24. Q. Can you be quite positive that you had not received any such intimation up to the time you ceased delivering coal to *to* the Emery Coal Company?

A. The matter of the Emery Coal Company was not discussed
370 that day; it was the matter of the bank account, and his answer was that the boys managed it, or something to that effect, and that he would speak to them about it.

25. Q. But I refer now to the conversation on New York avenue, when you showed the bill of lading to Mr. Emery.

A. I do not remember anything about a bill of lading at all; I can't conceive what I should have had a bill of lading for, because I never attended to bills of lading, or anything of that kind.

26. Q. It would have been out of your line to carry around a bill of lading to look for an endorser?

A. It is a thing I never did to my recollection, under any circumstances,

to anybody. I do not say that I did not, but I can't conceive of any reason why I should have done so.

A. LANGDON.

WILLIAM T. HICKOK, a witness on the part of the complainant in rebuttal, having been duly sworn, testified as follows:

By Mr. WORTHINGTON:

1. Q. You have already testified in this case about a conversation between Mr. Burrough and Mr. Emery, at the office of Barbour & Co.; when was that?

A. That was in December, 1876.

2. Q. I wish to hear you explain a little more fully the conversation that occurred at that time. You say in your deposition that Mr. Burrough stated that the Emery Coal Company was indebted only to Langdon, Albright & Co.; and you also say that he stated that they owed Samuel Emery, sr., $10,000. How do you reconcile these two statements?

(Mr. Dean objects to the question as leading and suggestive; because it is cumulative, and not in rebuttal of anything testified to by the
371 defendants; and also as misstating the testimony previously given by the witnesses.)

A. It is impossible for me to remember the exact words used in that conversation, but there is one remark that I do remember distinctly, and that was in regard to a statement which Mr. Burrough handed to Mr. Albright at that time, purporting to be a statement of the condition of the affairs of the Emery Coal Company, or nearly so, and that remark was, "You will see by this (pointing to the statement) that we do not owe anybody but you," or "Langdon, Albright & Co.;" and afterwards, during the conversation, which was quite an extended one, there was something said about $10,000 that was in the concern which came from Mr. Emery; the exact words that were used I cannot attempt to give you now, but my impression was that it was not a loan that was to be paid back out of the capital of the concern.

3. Q. What was the substance of what was said with reference to that $10,000 transaction?

(Question objected to by Mr. Dean.)

A. I cannot give you the substance of the conversation except the impression left on my mind by the whole conversation in regard to it; that is all.

4. Q. And what is your impression?

A. That impression was that this $10,000 was a part of the capital stock.

5. Q. Are you connected now with Langdon, Albright & Co.?

A. No, sir.

6. Q. What is your business now?

A. I am a general service clerk in the War Department.

7. Q. How long have you been disconnected with plaintiffs?

A. Since August, 1877.

8. Q. Have you any interest whatever in their business or matters?

A. None at all.

372 Cross-examination by Mr. DEAN:

9. X Q. Is your memory in regard to that conversation to-day better than it was on the 20th November, 1877, when you gave your deposition in this case before?

A. No, sir; I have no reason for thinking it is any better.

10. X Q. Is it as good?

A. I think it is as good, yes. I do not pretend to give the exact words used in that conversation at all.

11. X Q. Question 28th of your cross-examination was as follows: "But he stated at the time he presented that that he did owe that $10,000;" and your answer was, "Some time during the conversation, yes, sir." Is that correct?

A. That Mr. Burrough stated that he did owe this $10,000. What I meant to say there is what I say now, that there was something said about that, but only my impression remains.

12. X Q. You read over your testimony given on the 20th November before you signed it, and you made the necessary corrections, did you not?

A. I suppose so, yes, sir.

13. X Q. Did you make a memorandum in pencil on the border of it? (Referring witness to page 286 of his previous testimony in this case.)

A. I think that is my handwriting. I wrote that in Mr. Johns' office. The items in that statement of their affairs I do not remember as well now as when that testimony was given.

14. X Q. Do you wish to be understood as contradicting the testimony you gave on the 20th November, 1877?

A. I do not remember what that testimony was, unless you show it to me.

373 15. X Q. I refer to the question and answer I have just read over to you.

(Witness takes his former deposition and inspects it.)

A. I see it stated here that the statement was handed to me; that is a mistake; he did not hand the statement to me; I was present when he gave the statement to Mr. Albright, but it was not in my hands at that time; I did not know that that was in, or I would not have signed it.

WILLIAM T. HICKOK.

DISTRICT OF COLUMBIA,
*County of Washington, ss:*

I, A. Johns, examiner in chancery, do certify that the foregoing depositions, in pursuance of the foregoing annexed notice, were taken down by me in the presence and from the statements of the witnesses at the time and place hereinbefore designated, which depositions were afterwards respectively read over to or by said witnesses, and were respectively subscribed by them, the said witnesses having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

A. JOHNS,
*Examiner in Chancery.*

374 (Copy.)

EXHIBIT L., A. & CO. NO 1.—A. JOHNS, *Examiner.*

*The Emery Coal Co. to Sam. Emery.*

| | | | | | |
|---|---|---|---|---|---|
| 1876. | | | | | |
| May | 15 | By cash to McBride, $96.00; do. $58.00 | | | 154 00 |
| | " | " " " sch'r, $64.50; F. City, $48.30 | | | 112 80 |
| | " | " " " Berea Co., $70.05; Mrs. Emery, $25.00 | | | 95 05 |
| | " | For cash of Drumheller | 100 00 | | |
| Aug. | 12 | " " loaned | 150 00 | | |
| " | 20 | By " to pay loan | | | 150 00 |
| " | 28 | For " loaned | 500 00 | | |
| " | 31 | By am't from Com'r D. C | | | 36 25 |
| Sept. | 1 | " check to my order | | | 463 75 |
| " | 11 | " am't M. G. Emery's bill | | | 331 25 |
| " | 14 | " Barrow's notes at 60 and 90 days | | | 620 59 |
| " | 15 | For am't deposited to y'r ac't | 600 00 | | |
| " | 27 | By J. H. Crossman's note at 3 mo. this date | | | 902 50 |
| Oct. | 5 | " R. Collins' note at 60 days this date | | | 965 00 |
| " | 3 | " R. Crawford's note at 1 mo. this date | | | 662 78 |
| " | 6 | " check on ac | | | 1,000 00 |
| Nov. | 2 | " cash of H. McGraan | | | 18 00 |
| " | " | " " " N. Miller | | | 21 75 |
| " | " | " " " T. McWilliams | | | 79 90 |
| " | " | For int. on Collins' note | 13 50 | | |
| " | 6 | By Barrow's note at 60 days | | | 490 36 |
| " | 11 | For cash on ac't B.'s note | 400 00 | | |
| " | " | " rent of yard, 1st and B st., from Ap'l 1, '76, to Oct. 1, '76 | 150 00 | | |
| 1877. | | | | | |
| Feb. | 9 | By check on 2d N. Bank | | | 1,000 00 |
| " | " | " " " N. Metropolitan Bank | | | 1,000 00 |

375 EXHIBIT L., A. &. CO. NO. 2.—A. JOHNS, *Examiner.*

WASHINGTON, D. C., *May* 31, 1877.

Mr. Samuel Emery, sr., bought of the Emery Coal Co:

| | | | | |
|---|---|---|---|---|
| 1876. | | | | |
| April | 5 | ½ ton R. A. S. coal, French | 8 50 | 4 25 |
| | 6 | 2 " furn. " Met. church | 7 50 | 15 00 |
| | 28 | ½ " Cumb. " | 6 00 | 3 00 |
| May | 1 | 1 " " " Young | | 6 00 |
| | 5 | 4 " L. V. S | 8 25 | 33 00 |
| | 24 | Cash | | 261 85 |
| July | 13 | Metropol. church ac | | 15 00 |
| | 26 | Kindling for shop | | 83 |
| August | 2 | 6 ton W. A. F. coal | 6 25 | 37 50 |
| | | 5 " W. A. E. " | 6 55 | 32 50 |
| | | 2 " L. V. S. " | 8 00 | 16 00 |
| | 23 | 3 " L. V. E. " | " | 24 00 |
| | | 2 " W. A. S. " | 7 50 | 15 00 |
| September | 11 | M. G. Emery's ac | | 331 25 |
| | 6 | ¼ ton W. A. S. coal, French | | 1 75 |
| | 18 | ½ " Cumb. " | 6 00 | 3 00 |
| | 27 | 4 " L. V. S. " Wilson | 7 00 | 28 00 |
| | | 3 " W. A. S. " French | 6 00 | 18 00 |
| | | Crossman's note | | 902 50 |
| | 14 | Barrow's " cash bal | | 20 59 |
| October | 2 | Cash | | 1,000 00 |
| | | 3 ton W. A. S., H. McGraw | 6 50 | 19 50 |
| | 5 | ½ cord pine wood | 6 00 | 3 00 |
| | | ½ " oak " | 8 00 | 4 00 |
| | 6 | 2 ton W. A. S. coal, Mrs. Cromelein | 6 50 | 13 00 |
| | 7 | R. S. Crawford & Co., note | | 662 78 |
| | | R. Collins, " | | 965 00 |
| | | ¼ cord pine kindling | | 2 00 |
| | 16 | 1 ton W. A. S. coal, McNabb | | 6 50 |
| | | ½ cord pine wood | 6 00 | 3 00 |
| November | 30 | Cash bal. Barrow's note | | 65 36 |
| December | 23 | ½ ton W. A. S. coal, McNabb | | 3 50 |
| 1877. | | | | |
| January | 27 | T. McWilliams ac | | 37 75 |
| | | Mrs. McWilliams " | | 42 15 |
| | | N. Miller " | | 21 75 |
| 376 | 18 | W. C. Harvey ac | | 51 50 |
| | 19 | ½ cord pine wood | 6 00 | 3 00 |
| | 31 | Cash city gov't | | 36 25 |
| | | Metrop. church ac | | 198 00 |

| | | | | |
|---|---|---|---|---|
| 1877. | | | | |
| February | 7 | ½ ton W. A. S. coal, French | | 3 50 |
| | | ⅔ " L. V. E. " Miller | | 4 00 |
| | 19 | ¼ " W. A. S. " McNabb | | 3 50 |
| | " | ¼ cord pine wood, " | | 1 50 |
| | 26 | 2 ton L. V. E. coal | 7 00 | 14 00 |
| | | 2 " L. V. S. " | " | 14 00 |
| | | 2 " W. A. E. " | 5 50 | 11 00 |
| | | 2 " W. A. F. " | " | 11 00 |
| | | 1 " L. V. S. " Wilson | | 7 00 |
| | 28 | Putting away | | 2 40 |
| | 9 | Cash | | 2,000 00 |
| March | 2 | ¼ ton W. A. S. coal, French | | 1 75 |
| | 16 | ¼ " " " " | | 1 75 |
| | 19 | ½ " L. V. " Miller | 7 50 | 3 75 |
| | | 1 " " " Falvey | | 7 50 |
| | | Kindling wood " | | 50 |
| | 24 | 2,440 lb. W. A. S. coal, Ebbitt committee | 7 00 | 7 62 |
| April | 4 | ½ ton " " McNabb | | 3 50 |
| | 5 | ¼ " Cumb. " | | 1 50 |
| | 25 | ½ " W. A. S. " McNabb | | 3 25 |
| | | ½ cord pine wood | | 2 00 |
| | 3 | Order favor C. Burlew | | 50 00 |
| May | 4 | ½ ton L. V. S. coal, Wilson | | 1 75 |
| | | Long oak wood | | 1 00 |
| | | ½ ton Cumb. coal | 5 00 | 2 50 |
| | 8 | ½ " L. V. S. " French | | 1 75 |
| | 31 | Statement rend | | 1,814 53 |
| | | | | 8,883 61 |
| | | Cr. | | |
| 1876. December | 30 | By deduc., McGraw | 1 50 | |
| 1877. May | 18 | By cash adv. insp | 27 | |
| | | | | 1 77 |
| | | | | 8,881 84 |

Rec'd pay't.

THE EMERY COAL CO.,
S. E., JR.

377 EXHIBIT L., A. & CO. NO. 3.—A. JOHNS, *Examiner*.

WASHINGTON, D. C., *May*, 1877.

Mr. Samuel Emery bought of the Emery Coal Co.:

| | | | |
|---|---|---|---|
| 21. | To am't rend | | 1,429 16 |
| 22. | 2,320 lb' W. A. E. coal | 3 85 | 3 99 |
| | 4,480 " W. A. S. " | 4 50 | 9 00 |
| | 13,370 " W. A. E. " | 3 85 | 22 98 |
| 23. | 11 ton' W. A. E. " | " | 42 35 |
| 24. | 12 " " " | " | 46 20 |
| 25. | 11 " " " | 4 50 | 49 50 |
| 26. | 10 " R. A. S. " | " | 45 00 |
| 28. | 5 " " " | " | 22 50 |
| | 3 " Cumb. " run | 3 50 | 10 50 |
| 29. | 11 " " " " | " | 38 50 |
| 30. | 6 " R. A. S. " | 4 50 | 27 00 |
| | 9,010 lb' " " | " | 18 10 |
| 31. | 3 ton' " " | " | 13 50 |
| | 1 " L. V. S. " | | 5 00 |
| | 5 " chest. " | 3 85 | 19 25 |
| 16. | 1 office desk | | 12 00 |
| | | | 1,814 53 |

Rec'd pay't.

THE EMERY COAL CO.,
S. E., JR.

378 EXHIBIT L., A. & CO. NO. 4.—A. JOHNS, *Examiner.*

WASHINGTON, D. C., *June*, 1877.

Mr. Samuel Emery, sr., bought of the Emery Coal Co.:

| | | | | |
|---|---|---|---|---|
| 1. | 7 ton' chest. coal | 3 75 | | 26 25 |
| | 1 cord oak wood, r'gh | | | 3 50 |
| | 1 ton Cumb. coal, run | | | 3 25 |
| 2. | 11 " chest. " | 3 75 | | 41 25 |
| 4. | 10 " " " | " | | 37 50 |
| | 2 " " " | " | | 7 50 |
| 5. | 5 " " " | " | | 18 75 |
| | 11,440 ℔' " " | " | | 19 15 |
| | 1½ cord r'gh oak wood | 3 50 | | 5 25 |
| 6. | 6,480 ℔' Sham. S. coal | 4 50 | | 13 02 |
| | 11 ton' " " " | 4 25 | | 46 75 |
| | 6,920 ℔' W. A. S. " | 3 75 | | 11 58 |
| 7. | 3,750 " " " | " | | 6 23 |
| | 6 ton' R. A. S. " | 4 25 | | 25 50 |
| | 6 " L. V. S. " | 4 65 | | 27 90 |
| 8. | 1 " W. A. S. " | | | 3 75 |
| | 16,890 ℔' chest. " | 3 75 | | 28 28 |
| 9. | 2,100 " " " | " | | 3 51 |
| | 7 ton' L. V. S. " | 4 65 | | 32 55 |
| | 1 cord oak wood, r'gh | | | 3 50 |
| 11. | 10 ton' L. V. S. coal | 4 65 | | 46 50 |
| | 7,230 ℔' W. A. S. " | 3 75 | | 12 10 |
| | ½ cord r'gh oak wood | 3 50 | | 1 75 |
| 12. | 11 ton L. V. S. coal | 4 65 | | 51 15 |
| | ½ cord r'gh oak wood | 3 50 | | 1 75 |
| | 17,670 ℔' W. A. S. coal | 3 75 | | 29 58 |
| 13. | 7,210 " " " | " | | 12 07 |
| | 10 ton' chest. " | " | | 37 50 |
| 14. | 1 " R. A. E. " | | | 4 25 |
| | 8 " chest. " | 3 75 | | 30 00 |
| | 2 " W. A. S. " | " | | 7 50 |
| | 7,220 ℔' " " | " | | 12 09 |
| 15. | 7,190 " " " | " | | 12 04 |
| | 11 ton chest. " | " | | 41 25 |
| 16. | 5 " " " | " | | 18 75 |
| | 10,900 ℔' W. A. S. " | " | | 18 25 |
| | 7 ton Sham. S. " | 4 25 | | 29 75 |
| 18. | 10 " L. V. S. " | 4 65 | | 46 50 |
| | 7,200 ℔' W. A. S. " | 3 75 | | 12 05 |
| 379 | 19. ½ cord r'gh oak wood | 3 50 | | 1 75 |
| | 5 ton' R. A. S. coal | 4 25 | | 21 25 |
| | 2 ton' R. A. E. " | " | | 8 50 |
| | 2 " W. A. S. " | 3 75 | | 7 50 |
| 20. | 7 " " " | " | | 26 25 |
| | 3 " Sham. S. " | 4 25 | | 12 75 |
| | 1 " Cumb. " | run | | 3 25 |
| 21. | 10 " chest. " | 3 75 | | 37 50 |

| | | | | |
|---|---|---|---|---|
| | 1 " W. A. S. " ..... | | | 3 75 |
| | 10,240 ℔'. L. V. S. " ..... | | 4 65 | 21 26 |
| 22. | 1 cord rough oak wood..... | | | 3 50 |
| | 7 ton' L. V. E. coal..... | | 4 65 | 32 55 |
| | 14,100 ℔'. " " ..... | | " | 29 27 |
| | 3,610 " " " ..... | | 3 75 | 6 04 |
| | 3,680 " Cumb. " run..... | | 3 25 | 5 34 |
| | 9 ton' chest. " ..... | | 3 75 | 33 75 |
| | 1 " L. V. S. " ..... | | | 4 65 |
| 25. | 1 " W. A. S. " ..... | | | 3 75 |
| | 7 " W. A. E. " ..... | | 3 75 | 26 25 |
| | 3,680 ℔'. " " ..... | | " | 6 16 |
| 26. | 9 ton' " " ..... | | " | 33 75 |
| | 1 " Cumb. " run..... | | | 3 25 |
| | 3,440 ℔'. " " " ..... | | 3 25 | 4 99 |
| | 3,580 " W. A. S. " " ..... | | 3 75 | 5 99 |
| | Wharfage on 16 cords pine wood..... | | 15 | 2 40 |
| 29. | 3,480 ℔'. R. A. S. coal..... | | 4 25 | 6 60 |
| | 3,440 " chest. " ..... | | 3 75 | 5 76 |
| | 3,500 " L. V. S. " ..... | | 4 65 | 7 26 |
| | 10 ton'. W. A. F. " ..... | | 3 75 | 37 50 |
| | 4 " W. A. S. " ..... | | " | 15 00 |
| 30. | 2 " W. A. F. " ..... | | " | 7 50 |
| | | | | 1,214 82 |
| | | | | 60 20 |
| | | | | 1,275 02 |
| | | | | 8,881 84 |
| | | | | 10,156 86 |

Rec'd pay't.

THE EMERY COAL CO.,
S. E., JR.

380 EXHIBIT L., A. & CO. NO. 5.—A. JOHNS, *Examiner.*

*The Emery Coal Co. to Sam. Emery.*

| | | | |
|---|---|---|---|
| 2. | For your note of April 5, '76, on demand..... | $10,000 00 | |
| | " your note of April 5, '76, at 90 days..... | 4,000 00 | |
| | " your note of April 5, '77, at 4 months... | 3,170 85 | |
| | " int. on above to July 1, '77, at 8 p'r c't... | 1,717 08 | |
| | " 13½ mo. rent of y'd 1st & B st's, at $300... | 337 50 | |
| | " your due-bill of June 5, '76..... | 356 00 | |
| | " int. on due-bill to July 1, '77, 8 p'r c't... | 30 85 | |
| | | | 19,612 28 |

CR.

| | | |
|---|---|---|
| By am't bills rend. to June 30, '77..... | $10,156 86 | |
| By int. on am'ts paid to July 1, '77, at 8 p'r c't... | 515 00 | |
| | | $10,671 86 |
| | | $8,940 42 |
| By cr. on note of $10,000 of April 5, '76, 1 y'r & 2 mo. int. to July 1, '77..... | | $1,000 00 |
| " am't on face of note..... | | 1,059 58 |
| | | $2,059 58 |
| Am't due on note of $10,000, July 2, '77, and int. from date..... ..... ..... | | $7,940 42 |

381 EXHIBIT L., A. & CO. NO. 6.—A. JOHNS, *Examiner.*

WASHINGTON, D. C., *July 2d*, 1877.

*Sam'l Emery in account with the Emery Coal Co.*

| | | |
|---|---|---|
| May 31. | To am't statement rend..... | 8,881 84 |
| June 30. | " " " " ..... | 1,214 82 |
| | " McNabb..... | 8 00 |
| | " " ..... | 15 00 |
| | " O. H. Bundell..... | 3 50 |
| | Cobb ..... | 4 00 |
| | Sundry accounts..... | 22 70 |
| | | 10,156 86 |
| | Int. to..... | 515 |
| | | 10,671 86 |

7, 10, '77, closed by settlement this day to July 2, '77.

THE EMERY COAL CO.,
By E. E. BURROUGH.

382 EXHIBIT L., A. & CO. NO. 7.—A. JONES, *Examiner.*

WASHINGTON, D. C., , 187 .

M . bought of Samuel Emery:

| | | | |
|---|---|---|---|
| 1876. | | | |
| April 1. | To amount of stock and fixtures on hand..... | | 18,058 14 |
| | " " " outstanding accounts..... | | 16,980 09 |
| | | | 35,038 23 |
| | CR. | | |
| | By compensation to E. E. B. & S. E., jr..... | | 10,235 03 |
| | | | $24,803 20 |
| Ap'l 6. | For am't from Duvall on settlement .... | 83 50 | |
| 11. | " am't from Q. M. Dep't..... ..... | 25 15 | |

| | | | | |
|---|---|---|---|---|
| 12. | " | Emery & Co., check | 1,500 00 | |
| 23. | " | am't from U. S. Senate | 2,023 70 | |
| | | | | $3,632 35 |
| | | | | $21,170 85 |

383 Ap'l 1. By note of Emery Coal Co. on demand.... 10,000 00
" " " " " " 60 days..... 4,000 00
" " " " " " 90 days..... 4,000 00
" " " " " " 4 mo's..... 3,170 00

$21,170 00

1876.

| | | | | |
|---|---|---|---|---|
| Ap'l | 1. | For am't ch'd to coal & wood | | $28,813 14 |
| | | By am't on wood & coal y'd | | $102,773 39 |
| | | | | $26,039 75 |
| " | 6. | By coal & wood, freight, wharfage &c.. | 1,236 55 | |
| " | 6. | Duvall | 83 50 | |
| " | 11. | Q. M. Dep't | 25 15 | |
| " | 12. | " Emery & Co. ch'k | 1,500 00 | |
| " | 23. | " cash U. S. Senate | 2,023 70 | |
| | | | | $4,868 90 |
| | | Am't by my book | | $21,170 85 |

384 EXHIBIT L., A. & CO. No. 8.—A. JOHNS, *Examiner*.

WASHINGTON, D. C., *March 31st*, 1879.

*The Emery Coal Co. to Samuel Emery, Dr.*

| | | |
|---|---|---|
| To amount of cash & sundries advanced to date as p'r my books | | 128,813 14 |

CR.

| | | | |
|---|---|---|---|
| By cash and sundries to this date, inclusive..... | 102,773 39 | | |
| " " for freight, coal, &c..... | 1,236 55 | | |
| " " Duvall..... | 83 50 | | |
| " " Q. M. Department ..... | 25 15 | | |
| " " | 1,500 00 | | |
| " " U. S. Senate..... | 2,023 70 | | |
| | | 4,868 90 | |
| | | | 107,642 29 |
| | | | $21,170 85 |
| To am't of stoc' and fixtures on hand as p'r inventory made this day..... | | 18,058 14 | |
| To outstanding accounts as p'r ledger this day... | | 16,980 09 | |
| | | | 35,038 23 |
| Compensation to E. E. B. and S. E., jr..... | | | 10,235 03 |
| | | | 24,803 20 |

Less—

| | | | |
|---|---|---|---|
| Duvall's ac. rec'd by S. E. | 83 50 | | |
| Q. M. Department " " | 25 15 | | |
| Cash " " | 1,500 00 | | |
| U. S. S. " " | 2,023 70 | | |
| | | | 3,632 35 |
| April 5. Note on demand | 10,000 00 | | |
| " 5. " 60 days | 4,000 00 | | |
| " 5. " 90 " | 4,000 00 | | |
| " 5. " 4 mo's | 3,170 85 | | |
| | 21,170 85 | | $21,170 85 |

with 8 per cent. int. from date.

(Written across the face:) Received, Washington, D. C., April 25, 1876, from the Emery Coal Company their four promissory notes, as indicated at bottom of this statement, same being in settlement for my claim, twenty-one thousand one hundred and seventy dollars and eighty-five cents, as p'r this statement.
$21,170.85.]

SAM. EMERY.

385 EXHIBIT L., A. & CO. NO. 36.—A. JOHNS, *Examiner.*

*Contractor's application.*

WASHINGTON, 3 *mo.* 9, 1876.

T. M. RICHARDS, Esq.,
*General Coal Agent of the Philadelphia & Reading Coal and Iron Company, 227 South Fourth street, Philadelphia:*

SIR: Please enter upon your books, in accordance with terms and conditions of contractor's circular No. 1, our application for coal for season of 1876:

| | Lump. | Steamer. | Broken. | Egg. | Stove. | Chestnut No. 1. | Chestnut No. 2. | Total. |
|---|---|---|---|---|---|---|---|---|
| Hard white ash | | 1,000 | 8,000 | | | | | 9,000 |
| Free-burning white ash | | | | 4,000 | 4,000 | 2,500 | | 10,500 |
| Schuylkill red ash | | | | 1,000 | 2,000 | | | 3,000 |
| Shamokin | | | | 1,000 | 2,000 | | | 3,000 |
| Loruerry | | | | | | | | |
| Lykens Valley | | | | 1,000 | 4,000 | | | 5,000 |
| Totals | | 1,000 | 8,000 | 7,000 | 12,000 | 2,500 | | 30,5000 |

Wants 12,000 tons in first 2 mos. (See L., A. & Co.' letter M'ch 9, '76.)

Respectfully yours,

E. E. BURROUGH,
*Manager for S. Emery & Co.*

386 EXHIBIT A.

[National Republican. Washington, D. C., Dec. 11th, 1877.]

WASHINGTON, D. C., *April* 1, 1876.

I have this day disposed all of my interest in the wood and coal business at First and B streets, northwest, and at the wharf near the foot of Sixth street, southwest, to C. C. Sailer, Edward E. Burrough, and Samuel Emery, jr., who will hereafter conduct the business under the name of "Emery Coal Company." Thankful for past patronage, I respectfully ask a continuance of the same for my successors in the business. All persons having claims in connection with the above business will present them for payment, and all indebted will please make payment to "The Emery Coal Company."

SAMUEL EMERY.

WASHINGTON, D. C., *April* 1, 1876.

We, the undersigned, have this day associated ourselves together under the name and style of "The Emery Coal Company," for the purpose of continuing the wood and coal business heretofore carried on by Samuel Emery. We respectfully solicit a continuance of the patronage of our friends and the public generally.

C. C. SAILER.
EDWARD E. BURROUGH.
SAMUEL EMERY, JR.

I hereby certify that the advertisement herewith attached appeared in the issue of the National Republican of April 26 and 27, 1876.

Respectfully,

J. WHIT HERRON,
*Book-keeper National Republican.*

THE EVENING STAR,
*Washington, Dec.* 11, 1877.

I hereby certify that an advertisement exactly similar to the one above was inserted in The Evening Star of April 26th and 27th, 1876.

S. H. KAUFFMAN,
*President Evening Star Newspaper Co.*

387 EXHIBIT B.

Whereas E. E. Burrough, of Washington, District of Columbia, desires from time to time to purchase coal of Langdon, Albright & Co., upon credit; and whereas the said Langdon, Albright & Co., are willing to give the desired credit without security; now, therefore, in consideration of the premises *and* the said Langdon, Albright & Co. will sell to the said E. E. Burrough, from time to time, such quantities of coal, upon such terms as may be by them agreed upon, and also in consideration of one dollar to paid by said Langdon, Albright & Co., he promises and agrees to and with said Langdon, Albright & Co., that in case the said E. E. Burrough shall fail to pay for said coal at the time and times agreed upon,

he will pay the said Langdon, Albright & Co., for the same, and said promises and agrees to be primarily liable, so that in case of such failure, the said Langdon, Albright & Co. shall not be compelled to first proceed against the said E. E. Burrough, and this my promise and agreement shall be binding and obligatory, even though the said Langdon, Albright & Co. should by agreement or otherwise extend the time of payment, or take notes or other securities for the amount due, and the said Langdon, Albright & Co. shall not be obliged to give notice of any failure of the said E. E. Burrough to pay, and shall have the right to give such extension as they may desire.

Witness my hand and seal this day of , A. D. 1877.

In presence of—

388 *Decree fixing liability of Sam'l Emery and refer'ing to auditor.—Filed April* 15, 1879.

In the supreme court of the District of Columbia.

JOHN J. ALBRIGHT ET AL., PLAINTIFFS,
*vs.*
SAMUEL EMERY ET AL., DEFENDANTS. } In equity. No. 5697.

This cause coming on to be heard on bill, answers, and proofs, after argument by counsel, and on due consideration, it is ordered, adjudged, and decreed by the court in equity sitting this 15th day of April, in the year one thousand eight hundred and seventy-nine:

That the defendant Samuel Emery, in the bill of complaint called Samuel Emery, senior, is now and has been, since the first day of April, in the year one thousand eight hundred and seventy-six, esstopped as to the plaintiffs in this case from setting up, asserting, or maintaining any claim or demand as a creditor of the Emery Coal Company, one of the defendants in this case, growing out of the indebtedness
389 represented by the promissory notes for $21,170 given by said Emery Coal Company to the said Samuel Emery, and bearing date the fifth day of April, in the year 1876, and referred to and described in the proceedings herein.

That, as against these plaintiffs, the said Samuel Emery was not entitled to receive, and is not entitled to retain, the notes obtained by the said Samuel Emery on or about the 16' day of July, 1877, from the said Emery Coal Company, as collateral security for the note of said company for $4,750.00, designated in Exhibit A to the deed of assignment mentioned in the proceedings herein, and that said notes so received as aforesaid and the proceeds thereof are properly assets of the said Emery Coal Company.

That the defendant C. C. Sailer was and is, as to the plaintiffs in this case, to be considered as a partner in the said firm called the Emery Coal Company from April 1st, in the year 1876, to and including the 15th day of June, in the year 1877, and is liable as such partner to the plaint-
390 iff for all merchandise ordered of the plaintiffs by the said company between said 1st day of April, in the year 1876, and the said 15th day of June, in the year 1877.

That the defendants Edward E. Burrough and Samuel Emery, jr., were partners in said firm called the Emery Coal Company from the 1st day of April in the year 1876 to the 17th day of July in the year 1877, and are liable as such.

It, is also ordered, adjudged, and decreed that the assignment made by the said Emery Coal Campany to the defendants Mills Dean and John W. Ross, on the 18th day of July, 1877, recorded in liber 381, folio 268 et seq. of the land records of the District of Columbia be, and the same is hereby, set aside and declared void, and that the promissory note for the sum of $8,500 given by the said Emery Coal Company to the said C. C. Sailer, and designated in the exhibit marked "A" to said deed of assignment, is void as to the plaintiffs in this case.

It is further ordered that the receivers heretofore appointed in
391 this case do file forthwith a report of their proceeding from the time of their appointment to the present time.

It is further ordered that this cause be referred to the auditor to ascertain and report as follows:

First. What was the indebtedness of the said Emery Coal Company, and of the said members of said firm, respectively, to the plaintiffs at the time of the filing of this bill.

Second. What payments or allowances have been made by the said Emery Coal Company to the said Samuel Emery since the 1st day of April, in the year 1876, on account of the said indebtedness of $21,170.

Third. What promissory notes or other evidences of indebtedness the said Samuel Emery received from the said Emery Coal Company in the month of July, 1877, as afor'said, as collateral security for the said promissory note for $4,750.00 designated in said Exhibit A; and what moneys or other valuable thing has been received by the said Samuel
392 Emery in respect of said collateral notes, or any of them.

Fourth. The amounts to which the general creditors of the Emery Coal Company named in said Exhibit A are respectively entitled to receive of the money in the hands of the said receivers and ascertained to be due from said Samuel Emery in respect of the notes or the proceeds thereof received by the said Samuel Emery as collateral for said note of $4,750.00.

Fifth. The amount which the plaintiffs are entitled to recover from the said Samuel Emery, which under the principals of this decree shall be the difference between the sum which the plaintiffs are entitled to receive in respect of the general assets of said company and the whole amount of the indebtedness of said company to the plaintiffs at the time of the filing of the bill of complaint, provided that the said Samuel Emery shall not be required to pay more than the amount which it shall appear he has received on account of said indebtedness of $21,170.

And in stating said accounts the said auditor shall exclude from
393 the list of those entitled to share in the assets of said firm the said defendant C. C. Sailer, and also the said Samuel Emery as to the sum of $8,940.42, or as to so much of said indebtedness of $21,170 as remains unpaid to the said Samuel Emery, and he shall charge the said Samuel Emery with interest on the said payments or allowances made to him by said company in respect of said indebtedness of $21,170 from the dates on which they were respectively made.

The auditor in making his report shall consider the testimony heretofore taken in the case and such additional testimony as may be adduced by any of the parties to this suit.

And the rights of the parties having been determined is further ordered that all other matters be reserved until the coming in of the auditor's report.

By the court :

MACARTHUR, *Justice.*

(Indorsed:) 5697. Eq. doc. 17. Albright vs. Emery. Decree adjudging liability of Samuel Emery and referring cause to the auditor for instructions. M. 14, p. 305, 15 §. Filed Apr. 15, 1879. R. J. Meigs, clerk.

394 *Motion to vacate decree of April* 15, 1879, *&c.—Filed May* 3, 1879.

In the supreme court of the District of Columbia.

ALBRIGHT ET AL., PL'FFS, *vs.* SAMUEL EMERY ET AL., DEFENDANTS. } In equity. No. 5697.

Now comes the plaintiffs, by their solicitors, and move the court that the decree passed herein on the fifteenth day of April, 1879, be set aside, and instead thereof an order entered declaring the rights of the parties as defined in said decree, and referring the case to the auditor to state the accounts between said parties upon the terms prescribed therein.

A. L. WORTHINGTON AND
NATHANIEL WILSON,
*P't'ffs' Solicitors.*

To Messrs. JOHN W. ROSS, MILLS DEAN, and S. S. HENKLE,
*Sol'rs for Def'ts:*

395 Please take notice that we will call the above motion up for hearing on Saturday, May 3, 1879, at 11 a. m., or as soon thereafter as counsel can be heard.

WORTHINGTON & WILSON.

Service acknowledged this third day of May, 1879.

S. S. HENKLE,
ROSS & DEAN,
*Sol's for Def'ts.*

(Indorsed:) No. 5697. In equity. John J. Albright et al., pl'ffs, vs. Samuel Emery, et al., def'ts. Motion to vacate decree passed on the 15' of April, 1879, and instead thereof an order entered declaring rights of parties as defined in said decree, and referring case to auditor. Filed May 3, 1879. R. J. Meigs, clerk.

396 *Decree referring cause to auditor.—Filed May 3, 1879.*

In the supreme court of the District of Columbia.

JOHN J. ALBRIGHT ET AL., PLAINTIFFS,
*vs.*
SAMUEL EMERY ET AL., DEFENDANTS. } In equity. No. 5697.

This cause coming on to be heard upon the motion of the solicitors for the plaintiffs to set aside the decree passed herein on the 15th day of April, 1879, counsel for all parties appearing and submitting the case to the consideration of the court without argument, it is, this 3d day of May, 1879, ordered and adjudged that said decree be, and the same is hereby, vacated. And it appearing to the court that the defendant Samuel Emery, in the bill of complaint called Samuel Emery, senior, is now and has been since the first day of April, in the year one thousand eight hundred and seventy-six, estopped, as to the plaintiffs in this case, from setting up, as-

397 serting, or maintaining any claim or demand as a creditor of the Emery Coal Company, one of the defendants in this case, growing out of the indebtedness represented by the promissory notes for $21,170, given by said Emery Coal Company to the said Samuel Emery, and bearing date the fifth day of April, in the year 1876, and referred and described in the proceedings herein.

And that as against these plaintiffs the said Samuel Emery was not entitled to receive, and is not entitled to retain, the notes obtained by the said Samuel Emery on or about the 16th day of July, 1877, from the said Emery Coal Company as collateral security for the note of said company for $4,750, designated in Exhibit A to the deed of assignment mentioned in the proceedings herein, and that said notes so received as aforesaid, and the proceeds thereof, are properly assets of the said Emery Coal Company.

And that the defendant C. C. Sailer was and is as to the plaintiffs in this case to be considered as a partner in the said firm called the Emery Coal Company from April 1st, in the year 1876, to and including

398 the 15th day of June, in the year 1877, and is liable as such partner to the plaintiff for all merchandise ordered of the plaintiffs by the said company between said 1st day of April, in the year 1876, and the said 15th day of June, in the year 1877.

And that the defendants Edward E. Burroughs and Samuel Emery, jr., were partners in said firm called the Emery Coal Company from the 1st day of April, in the year 1876, to the 17th day of July, in the year 1877, and are liable as such.

And that the assignments made by the said Emery Coal Company to the defendants Mills Dean and John W. Ross, on the 18' day of July, 1877, recorded in liber 381, folio 268 et seq. of the land records of the District of Columbia be, and the same is hereby, set aside and declared void, and that the promissory note for the sum of $8,500 given by the said Emery Coal Company to the said C. C. Sailer and designated in the exhibit marked "A" to said deed of assignment, is void as to the plaintiffs in this case.

399 And it further appearing to the court that the case is not ready for final hearing and decree, it is further ordered that the receivers

heretofore appointed in this case do file forthwith a report of their proceedings from the time of their appointment to the present time.

It is further ordered that this cause be referred to the auditor to ascertain and report as follows:

First. What was the indebtedness of the said Emery Coal Company, and of the said members of said firm, respectively, to the plaintiffs at the time of the filing of this bill.

Second. What payments or allowances have been made by the said Emery Coal Company to the said Samuel Emery since the 1st day of April, in the year 1876, on account of the said indebtedness, $21,170.

Third. What promissory notes or other evidences of indebtedness the said Samuel Emery received from the said Emery Coal Company, in the month of July, 1877, as aforesaid, as collateral security for the said
400 promissory note for $4,750, designated in said Exhibit A, and what moneys or other valuable thing has been received by the said Samuel Emery in respect of said collateral notes, or any of them.

Fourth. The amounts to which the general creditors of the Emery Coal Company named in said Exhibit A are respectively entitled to receive of the said receiver and ascertained to be due from said Samuel Emery in respect of the notes or the proceeds thereof received by the said Samuel Emery as collateral for said note of $4,750.

Fifth. The amount which the plaintiffs are entitled to recover from the said Samuel Emery, which, under the principals of this decree shall be the difference between the sum which the plaintiffs are entitled to receive in respect of the general assets of said company and the whole amount of the indebtedness of said company to the plaintiffs at the time of the filing of the bill of complaint, provided that the said Samuel Emery shall
401 not be required to pay more than the amount which it shall appear he has received on account of said indebtedness of $21,170.

And in stating said accounts the said auditor shall exclude from the list of those entitled to share in the assets of said firm the said defendant C. C. Sailer and also the said Samuel Emery as to the sum of $8,940.42, or as to so much of said indebtedness of $21,170 as remains unpaid to the said Samuel Emery, and he shall charge the said Samuel Emery with interest on the said payments or allowances made to him by said company in respect of said indebtedness of $21,170, from the dates on which they were respectively made.

The auditor, in making his report, shall consider the testimony heretofore taken in this case, and such additional testimony with reference to the statement of the foregoing accounts as may be adduced by any of the parties to this suit.

By the court:

MACARTHUR, *Justice.*

(Indorsed:) 5697. Eq. doc. 18. In equity. No. 5697. John J. Albright et al. vs. Samuel Emery et al. Decretal order referring case to auditor. M. 14, p. 349, 16 §. Filed May 3, 1879. R. J. Meigs, clerk.

402 *Report of receivers, May* 12, 1879.

In the supreme court of the District of Columbia.

ALBRIGHT ET AL.
*vs.*
EMERY ET AL. } In equity. 5697.

To the supreme court of the district of Columbia in special term in equity:

The undersigned receivers in this case, in accordance with the order of the court of May 3d, 1879, submit the following report:

1. All the coal which came into our possession as receivers, except a very small quantity, has been taken from us under writs of replevin in several suits, all of which are still pending in the law side of this court.

2. The coal which was left in our hands, together with all the other personal property of the Emery Coal Company, we have sold by auction, and have realized therefrom the net sum of thirteen hundred twenty-five & $\frac{78}{100}$ dollars ($1,325.70). The auctioneer's % of sales is herewith
403 filed as a part of this report.

3. The real estate described in the report filed by us in this case Aug. 27th, 1877, we have, with the scan'tion of the court, sold to B. Nute, jr., for five hundred dollars; he has paid this sum and also five dollars as interest in deferred payments.

4. Upon various notes and open accounts held by the Emery Coal Co., we have collected the sum of five hundred and eighty-one $\frac{30}{100}$ dollars ($581.30); the dates and several amounts of these collections more fully appear from our cash %, which is herewith filed.

5. Besides necessary advertising bills, we have paid fifty-eight dollars to two watchmen—one a day the other a night watchman—whom we employed to take care of the effects of the Emery Coal Co. prior to the auction, and we have paid to T. A. Lambert, att'y for John Van Riswick, five hundred sixty-two & $\frac{50}{100}$ dollars ($562.50), under the order of the court.

404 6. The foregoing is a full statement of our receipts and expenditures as receivers. Vouchers for the several items of expenditures are filed herewith.

The proceeds of the sale of personal property, made by Ross & Dean, assignees of the Emery Coal Co., have *now* come into our hands, but are, as we are informed, in the registry of this court. We still hold a number of notes & open %s of the Emery Coal Co., some of which are probably collected in whole or in part. The balance (cash) now in our hands is sixteen hundred seventy-two & $\frac{73}{100}$ dollars ($1,672.63).

A. L. BARBER,
MILLS & DEAN,
*Receivers Emery Coal Company.*

We on oath say that the foregoing is a true statement, according to the best of our knowledge and belief.

A. L. BARBER,
MILLS & DEAN,
*Receivers Emery Coal Co.*

Sworn & subscribed before me this ninth day of May, A. D. 1879, by A. L. Barber.

H. A. HALL, [SEAL.]
*Justice of the Peace.*

405 Subscribed and sworn to before me by Mills Dean this 9th day of May, 1879.

JAS. PAYNE, *Auditor.*

406 WASHINGTON, D. C., *August* 21, '77.

*% sales for A. L. Barber and Mills Dean, receivers Emery Coal Company.*

| | | |
|---|---|---|
| Engine and hoisting apparatus | 500 | |
| 6 coal cars, @ $8 | 48 | |
| Allwoods posts and iron track | 150 | |
| Lot coal screenings | 1 | |
| 6 tons coal, @ $4 | 24 | |
| 2 tons coal, @ $4 | 8 | |
| 63 " " @ $3.25 | 204 | 75 |
| 10 " " @ $4.50 | 45 | |
| 8 screens, @ $2 | 16 | |
| Coal scales & w'ts, @ | 75 | |
| Lot wood | 6 | |
| " lumber, fence, & posts | 30 | |
| Screenings & canal coal | 5 | 50 |
| Wood barrow | 2 | |
| 1 iron safe | 72 | 50 |
| 1 writing-table | 4 | |
| 1 high desk | 6 | |
| 1 walnut desk | 11 | |
| 11 chairs, @ | 9 | |
| 1 map | 1 | |
| 1 clock | 8 | 50 |
| 1 walnut desk | 5 | |
| 1 letter press | 2 | 50 |
| 4 awnings, @ $1.40 | 5 | 60 |
| Lot lumber | 60 | |
| " " | 6 | |
| | $1,306 | 35 |

407 *Cash % Barber & Dean, receivers, Emery Coal Co.*

| | | Cash received. | |
|---|---|---|---|
| 1877. | | | |
| July 27. | From S. C. McDowell | 16 | |
| Aug. 2. | Wash'n Steamboat Co | 62 | 26 |
| | Second National Bank | 105 | 39 |
| 11. | Havener's bakery | 58 | 15 |
| 13. | B. H. Duvall, jr | 21 | 25 |
| " | G. W. Davis, by Costar | | 60 |

| | | | | | |
|---|---|---|---|---|---|
| | " | John Brown | | 1 | 45 |
| | 16. | C. H. Burgess & Co | | 7 | |
| | | G. L. Draper | | 10 | 55 |
| | | C. Burlew | | 5 | 75 |
| | 18. | Martin Becked | | 5 | 50 |
| | 21. | Sworss Bros | | 28 | 65 |
| | | A. F. Rockwell | | 2 | 83 |
| | | Wm. Warham | | 1 | 12 |
| | 25. | Wm. Thompson | | 9 | |
| | 27. | F. Reichback [Illegible] | | 3 | |
| | | A. A. Humphreys | | 11 | 55 |
| | | Wash. B. Williams, auctioneer | | 1,325 | 70 |
| Sept. | 1. | Wm. Laman | | 4 | 50 |
| | 3. | B. Nute, jr., % purchase | | 25 | |
| | 22. | P. Phillips, in full of % | | 2 | |
| | 29. | H. J. Wylie | | 6 | 25 |
| Oct. | 16. | W. H. Byles | | 10 | 75 |
| Nov. | 4. | J. F. O'Neil | | 7 | |
| Dec. | 28. | J. S. Baldwin | | 12 | |
| 1878. | | | | | |
| Jan. | 15. | Thos. Banks | | 9 | 29 |
| | 16. | John McElroy | | 9 | 65 |
| | 17. | Gen'l McDunn | | 63 | 73 |
| | 27. | P. Pollard | | 4 | 90 |
| | | Carried forward. | | | |
| 408 | | Amount bro. forward | | $1,306 | 35 |
| | | 6 iron coal-tubs, @ $7 | | 42 | |
| Lot wood, @ | | | | 11 | |
| Rope & block | | | | 2 | |
| 1 truck | | | | 5 | 25 |
| Lot bran | | | | 1 | |
| Contents of room | | | | 19 | |
| Lot hay | | | | 5 | 50 |
| Wood coal-buckets, canvass & etc | | | | 2 | |
| Stalls, flooring, & etc | | | | 9 | |
| Unexpired lease | | | | 5 | |
| | | | | $1,408 | 10 |
| Commission, & etc | | | 70 40 | | |
| Bellman | | | 1 00 | | |
| Service rend., trying props | | | 10 00 | | |
| Bellman | | | 1 00 | | |
| | | | 70 | $1,408 | 10 |
| Cash to settle | | | | 1,325 | |

Settled by Walter B. Williams for Wash. B. Williams.

Aug. 23, '77.

| | | | | |
|---|---|---|---|---|
| 409 | | Amount bro't forward. | | |
| | Mar. 8. | J. T. Whitaker | 5 | |
| Apr. | 5. | B. Nute, jr., % purchaser | 300 | |

| | | | | |
|---|---|---|---|---|
| Apr. | 8. J. T. Whitaker | 5 | | |
| | 24. T. P. Morgan | 65 | 68 | |
| Aug. | 15. B. Nute, ⅔ purchaser | 125 | | |
| Dec. | 8. " " " " | 30 | | |
| | | | | 2,412 |

1877.

Cash expended:

| | | | | |
|---|---|---|---|---|
| Apr. | 4. Paid Daily Nation | 50 | 87 | |
| | 6. Eve'g Star | 60 | 75 | |
| | 7. St. Cloud Printing Co | 1 | 25 | |
| | | $112 | 87 | $2,412 |
| Aug. | 11. Paid law reporter | 1 | 50 | |
| | 23. Dorsey, 29 days, @ $1 | 29 | | |
| | " Red, 29 " $1 | 29 | | |
| | 27. Ev'g Star | 4 | 50 | |
| Sept. | 4. T. A. Lambert, att'y | 375 | | |
| Nov. | 9. " " " | 187 | 50 | |
| | | | | 737 37 |
| | Balance on hand | | | $1,672 63 |

410 WASHINGTON, D. C., *Aug.* 4, 1877.

*Messers. A. L. Barber and Mills Dean, receivers to the Nation Company, Dr.*

Aug. 6. To ad. auction sale, 18½ sq., @ $2.75 ..... $50 87

Received payment.

THE NATION CO.
E. L. KINNEY, *Treu'ser.*
Per E.

WASHINGTON, D. C., *Aug.* 6, 1877.

*Barber & Dean, receivers, to the Evening Star Newspaper Co., Dr.*

To advertising in the Evening Star as follows:
Receivers' sale, 18 sq. 8 t ..... $60 75

Received payment for co.

JNO. T. SALLENAN.

WASHINGTON, D. C., *Aug. 7th,* 1877.

*Mr. A. L. Barber, receiver, to St. Cloud Printing Co., Dr.*

200 circulars ..... $7 25

Rec. payment.

COFFMAN & CO.

411 WASHINGTON, D. C., *August* 11, 1877.

*Mr. A. L. Barber to Washington Law Reporter, Dr.*

1877.
Aug. 11. To pub. receivers' notice to debtors..... $1 50

Rec'd payment.

JOHN L. GUICK.
D. W. O.

WASHINGTON, D. C., *Sept.* 3*rd*, 1877.

Received of A. L. Barber, Mills & Dean, receivers, twenty-nine dollars, the same being for services as watchman at Emery coal wharf & yard.
29.00.] O'SHASAN DORSEY.

WASHINGTON, D. C., *Sep.* 3, 1877.

Received of A. L. Barber & Mills & Dean, receivers, twenty-nine dollars for services as watchman at Emery Coal Co. wharf.
$29.00.]

EDWARD + RED.

Witness:
R. M. RICHARDS.

412 WASHINGTON, D. C., 10' *May*, 1879.

*A. L. Barber & C. to the Evening Star Newspaper Co., Dr.*

To advertising in the Evening Star as follows:

Cause 5697, 353..... ..... 4 50

Received payment for co.

H. L. ADAMS, *Bo.*

(Duplicate.)

(Indorsed:) No. 5697. Eq. doc. 17. Langdon et al. vs. Emery et al. Report of receivers. Filed May 12, 1879. R. J. Meigs, clerk.

413 *Report of auditor.—Filed June* 13, 1879.

REPORT OF AUDITOR.

In the supreme court of the District of Columbia.

JOHN J. ALBRIGHT ET AL.
*vs.*
SAMUEL EMERY ET AL.
} In eq. No. 5697. Report of auditor.

This cause was referred to me to ascertain the indebtedness of the Emery Coal Co. and its members to the plaintiffs, the payments made upon the same, and the liability of Samuel Emery, sr. The instructions to me are lengthy, and I refer to the decree itself as to their specific character.

In Schedule A, accompanying this report, I have stated the indebtedness of the Emery Coal Co. and of the members of said firm, respectively, to the plaintiffs at the time of the filing of the bill of complaint. This indebtedness is evidenced by notes, seven in number, the latest of which in date is June 5, 1877, and a check dated July 11, 1877, said indebt-
414 edness amounting in all to $18,605.67, and to bear interest from the maturity of the said several notes and the date of the said check. By the terms of the decree referring the case to me the defendant C. C. Sailer is to be considered as a partner in the said firm from the 1st of April, 1876, to and including the 15th day of June, 1877. The seven notes in question all come within these dates, and were given for coal or merchandise ordered by the said coal co. prior to the said 15th day of June, and for which, therefore, the said C. C. Sailer is liable as a partner of said firm. The check for $375 is dated July 11, 1877. It will appear, however, by the accounts filed and returned as exhibits to this report that the indebtedness represented by this $375 accrued prior to the 15th day of June, 1877, and the said C. C. Sailer is therefore liable for this amount as a member of the said firm. The said notes and check are also returned as exhibits to this report, and marked "Nos. 1 to 8 inclusive."

415 In Schedule B I have stated the payments and allowances that were made by the said Emery Coal Co. to the said Samuel Emery since the 1st day of April, 1876, on account of the indebtedness to him of $21,170. In making this schedule I have, wherever it was quite practicable, fixed the beginning of interest at the date of the payments of specific sums of money; but in regard to the item of $10,334.36 I have fixed the date for the commencement of interest at the date of the settlement between the said Samuel Emery and the said coal co., in which settlement this amount appears to have been the balance received by the said Samuel Emery.

In Schedules C and D I have stated the promissory notes and evidences of indebtedness received by the said Samuel Emery from the said Emery Coal Co. in July, 1877, as collateral security for a certain promissory note of $4,750, and the monies received by him in respect to the said
416 collateral notes, stating the notes themselves in Schedule C and the monies received upon them in Schedule D. In making up the latter schedule I have charged Mr. Emery with interest upon such notes as he acknowledges to have received payment of in full from the date of the maturity of such notes, as in his deposition he is unable to state the amount of interest received, and it is to be presumed that collecting the notes in full he received both principal and interest, and that the notes at least bore such interest from their maturity. In the case of one note, that of the Mineral Spring Co., he testifies that he sold the note or parted with it for the sum of $200, which was all it was worth; and I have charged him with that sum without interest.

In Schedule E, for the purpose of ascertaining the fund available for distribution, I have stated the costs and expenses incurred by the receivers and the payments made under the order of the court. I have allowed the receivers a commission upon the amount received by them
417 of 10 per cent. The vouchers for their expenditures will be found attached to their report, filed on the 12th day of May, 1879. The

rent paid by them to John Van Riswick was for rent due at the time of their appointment as receivers, and paid by them upon the order of the court.

In Schedule F I have stated the amount of money deposited in court by the assignees and the amount of that fund remaining in court at this time, the amount in the hands of the receivers, and the amount for which Samuel Emery is liable, as stated in Schedule D, aggregating a total fund for present distribution of $5,201.18.

In Schedule G I have stated a list of the general creditors of the Emery Coal Co., and the amounts severally due to them, including in this schedule the plaintiff, Samuel Emery, sr., as to the two notes of $4,750 and $1,500, and the creditors named in the assignment dated the 18th day of July, 1877, excepting that I have omitted from the latter the
418 claim for rent, which has since been satisfied.

In Schedule H I have stated the amounts which the general creditors of the said Emery Coal Co. are respectively entitled to receive from the receivers and the fund in court, and the amount due from Samuel Emery, as per Schedule D.

Schedule I shows the amounts which the plaintiffs are entitled to recover from the said Samuel Emery under the principles of the decree. By reference to Schedule B it will be seen that the calculation of interest to the date of the filing of the bill of complaint upon the several amounts received by Samuel Emery, sr., on account of the indebtedness of $21,170, will swell the aggregate of that schedule beyond the amount found in this schedule as the liability of Mr. Emery. I have generally adopted the time of filing the bill as the date of adjustment, excepting, however, as to Schedule D, in which I have calculated interest to the 15th of July
419 to allow time for action of the court upon this report.

JAS. G. PAYNE, *Auditor.*

JUNE 5, 1879.

420 SCHEDULE A.

*Statement of the indebtedness of the Emery Coal Company and the members of said firm respectively to the plaintiffs at the time of the filing of the bill of complaint.*

Notes of the Emery Coal Company held by plaintiffs as follows:

| | |
|---|---|
| Note May 12, 1877, at 3 months | 2,529 16 |
| Interest from Aug. 12, 1877. | |
| Note May 14, 1877, at 60 days | 3,500 |
| Interest from July 14, 1877. | |
| Note May 19, 1877, at 3 months | 2,731 50 |
| Interest from Aug. 19, 1877. | |
| Note May 25, 1877, at 3 months | 2,746 26 |
| Interest from Aug. 25, 1877. | |
| Note June 2, 1877, at 2 months | 2,529 16 |
| Interest from Aug. 2, 1877. | |
| 421 Note June 5, 1877, at 3 months | 2,096 27 |
| Interest from Sept. 5, 1877. | |

| | | |
|---|---|---|
| Note June 15, 1877, at 3 months | 2,096 | 27 |
| Interest from Sept. 15, 1877. | | |
| Check July 11, 1877 | 375 | |
| Interest from date. | | |
| Protest | 2 | 05 |
| Total principal | $18,605 | 67 |

422 SCHEDULE B.

*Statement of payment and allowances made by the Emery Coal Company to Samuel Emery since April 1st, 1876, on account of the indebtedness of* $21,170.

Payments on the $4,000 note dated April 5th, 1876, payable in 60 days:

1876.

| | | | |
|---|---|---|---|
| June | 8. Payment cash | 1,800 | |
| | Interest. | | |
| " | 10. Payment cash | 1,000 | |
| | Interest. | | |
| " | 12. Payment cash | 900 | |
| | Interest. | | |

Other payments and allowances:

1877.

| | | | |
|---|---|---|---|
| July | 1. Credits given on the other notes and interest in the settlement of that date | 10,334 | 36 |
| | Interest on this sum from July 1st, 1877. | | |
| " | 14. Additional payment on $10,000 note | 658 | 32 |
| | Interest on this sum from July 14th, 1877. | | |

423 SCHEDULE C.

*Statement of notes &c., received by Samuel Emery, sr., from the Emery Coal Company as collateral security for the note of* $4,750.

| | | |
|---|---|---|
| Note of R. McDonald, July 2, 1877, at 30 days (paid 26.38.) | 298 | 38 |
| Note of R. McDonald, July 2, 1877 at 60 days (paid, 58.89.) | 398 | 38 |
| Note of Jos. B. Glotzbach, July 2, 1877, at 60 days (paid, 10.00) | 231 | 50 |
| Note of Thwing and Hitchcock, July 2, 1877, at 3 months (paid) | 121 | 50 |
| Note of R. Collins, July 5, 1877, at 60 days; $100 of this note was paid (paid, 104.85.) | 501 | 00 |
| Note of R. Andrews, July 9, 1877, at 90 days (paid, 326.54) | 361 | 46 |
| Note of J. H. Baum, July 10, 1877, at 2 months (paid) | 180 | 97 |
| Note of Washington Brick M. Co., July 10, 1877, at 3 months (paid) | 1,318 | 57 |
| Note of Mineral Spring Co., overdue | 750 | 00 |

This note he sold for $200, which was all it was worth.

424 SCHEDULE D.

*Statement of moneys received by Samuel Emery in respect of the collateral notes specified in Schedule C.*

| | | |
|---|---|---|
| Upon first note of R. McDonald, in part | | 26 38 |
| Upon second note of R. McDonald, in part | | 58 89 |
| Upon note of Jos. B. Glotzbach, in part | | 10 00 |
| Note of Thwing and Hitchcock, due Oct. 2d, 1877, in full | 121 50 | |
| Interest from maturity to July 15, 1879 | 12 96 | |
| | | 134 46 |
| Upon note of R. Collins, in part | | 104 85 |
| Upon note of R. Andrews, in part | | 326 54 |
| Note of J. H. Baum, due Sept. 10, 1877 | 180 77 | |
| Interest from maturity | 19 96 | |
| | | 200 73 |
| Note of Wash. Brick Machine Company, due Oct. 10, 1877 | $1,318 57 | |
| Interest from maturity | 131 89 | |
| | | 1,450 46 |
| Amount realized from the note of Mineral Spring Co. | | 200 00 |
| | | 2,512 30 |

425 SCHEDULE E.

*Statement of costs and expenses to paid from the fund.*

COSTS AND EXPENSES.

| | |
|---|---|
| 1. Advertising sale in Daily Nation | 50 87 |
| 2. " " " Evening Star | 60 75 |
| 3. Printing circular, St. Cloud Printing Co. | 1 25 |
| 4. Publication, Law Reporter | 1 50 |
| 5. Osborn Dorsey, services as watchman | 29 00 |
| 6. Edward Red, services as watchman | 29 00 |
| 7. Publication in Evening Star | 4 50 |
| Commissions of receivers on 2,412.00 at 10 per cent | 241 20 |
| Auditors' fee, this audit | 50 00 |
| | 468 07 |

These vouchers are with the receivers' rep't.

OTHER DISBURSEMENTS.

| | |
|---|---|
| Amount of wages paid to employees from fund in court | 216 05 |
| Amounts paid by receivers to John Van Riswick for rent, by order of court | 562 50 |

426 SCHEDULE F.

*Statement of fund available for distribution among the general creditors.*

| | | |
|---|---|---|
| Amount deposited in court by the assignees..... | 1,523 50 | |
| Less amount paid by order of court for wages..... | 216 05 | |
| | | 1,307 45 |
| Amount received by the receivers as per their report..... | 2,412 00 | |
| Less rents paid and costs and expenses from Schedule E..... | 1,030 57 | |
| | | 1,381 43 |
| Amount received by Samuel Emery as per Schedule D..... | | 2,512 30 |
| Total, present fund for distribution..... | | 5,201 18 |

427 SCHEDULE G.

*List of general creditors and amounts severally due to them, including interest.*

| | | |
|---|---|---|
| Langdon, Albright and Co., amount of notes and check as per Schedule A..... | 18,605 67 | |
| Samuel Emery, sr. note dated June 21, 1877, at 30 days, with interest at 8 %..... | 4,750 | |
| Interest. | | |
| Note dated June 22, 1877, at 60 days, with interest at 8 %... | 1,500 | |
| Interest. | | |
| Thomas Potee, amount..... | | 11 20 |
| John A. Baker, " ..... | | 80 37 |
| Thomas W. Smith, " ..... | | 2 56 |
| William Ryan ..... | | 18 62 |
| Gibson Bro's..... | | 8 00 |
| A. J. Williams..... | | 8 30 |
| Stephenson and Bro..... | | 22 00 |
| G. L. Sheriff, amount..... | | 76 91 |
| 428 W. M. Galt & Co., amount..... | | 125 70 |
| T. Edw. Clark and Co. " ..... | | 19 |
| New England Carr Co., " ..... | | 23 55 |
| A. Archer & Bro..... | | 71 19 |
| Wash. and Geo'town R. R. Co., " ..... | | 2 00 |
| P. Mann, " ..... | | 49 68 |
| Geo. A. Sheehan..... | | 52 51 |
| John W. Grasin, ag't, " ..... | | 30 00 |
| Maryland Coal Co., " ..... | | 78 47 |

429 SCHEDULE H.

*Apportionment of fund from Schedule C, among general creditors.*

Amount of fund, 5,201.18.

| Name of creditor. | Indebtedness. | Distribution. |
|---|---|---|
| Langdon, Albright and Co | 18,605 67 | 3,786 69 |
| Samuel Emery, senior | 6,288 47 | 1,279 93 |
| Thomas Potee | 11 20 | 2 28 |
| Jno. A. Baker | 80 39 | 16 25 |
| Thos. W. Smith | 2 56 | 52 |
| Wm. Ryan | 18 62 | 3 78 |
| Gibson Bros | 8 00 | 1 63 |
| A. J. Williams | 8 30 | 1 69 |
| Stephenson and Bro | 22 00 | 4 47 |
| G. L. Sheriff | 76 91 | 15 65 |
| W. M. Galt and Co | 125 70 | 25 86 |
| T. Edw. Clark and Co | 19 | 4 |
| New Eng. Carr Co | 23 55 | 4 79 |
| A. Archer and Bro | 71 19 | 14 54 |
| Wash. and G't'n R. R. Co | 2 00 | 41 |
| P. Mann | 49 68 | 10 08 |
| Geo. A. Sheehan | 52 51 | 10 68 |
| Jno. W. Grasin, ag't | 30 00 | 6 10 |
| Maryland Coal Co | 78 47 | 15 96 |
| Fractions | | 3 |
| | | 5,201 18 |

430 SCHEDULE I.

*Statement of amount which the plaintiffs are entitled to recover from the said Samuel Emery.*

Amount of indebtedness due to the plaintiffs as per Schedule A ..... 18,605 67

Amount which the plaintiffs are entitled to receive from the present fund for distribution as per Schedule G ..... 3,786 69

Difference ..... 14,818 98

With interest on this amount from the date of the filing of the bill of complaint.

431 SCHEDULE K.

*Showing the portions of the distribution in Schedule H, payable respectively from the fund in court, that in the hands of the receivers, and from Samuel Emery, senior.*

| Name of creditor. | From the fund in court. | From the receivers. | From Sam'l Emery, sr. |
|---|---|---|---|
| Langdon, Albright and Co | 951 97 | 1,004 99 | 1,829 73 |
| Samuel Emery, sr | 321 83 | 340 34 | 617 76 |
| Thomas Potee | 57 | 61 | 1 10 |
| John A. Baker | 4 06 | 4 28 | 7 91 |
| Thomas W. Smith | 13 | 14 | 25 |
| William Ryan | 94 | 1 01 | 1 83 |
| Gibson Brothers | 41 | 44 | 78 |
| A. J. Williams | 42 | 45 | 82 |
| Stephenson and Bro | 1 12 | 1 20 | 2 15 |
| G. L. Sheriff | 3 91 | 4 21 | 7 53 |
| W. M. Galt and Co | 6 42 | 6 91 | 12 33 |
| T. Edward Clark and Co | 1 | 1 | 2 |
| New England Carr Co | 1 20 | 1 29 | 2 30 |
| A. Archer and Bro | 3 64 | 3 92 | 6 98 |
| Wash. and Geo. R. R. Co | 10 | 11 | 20 |
| P. Mann | 2 52 | 2 79 | 4 77 |
| Geo. A. Sheehan | 2 67 | 2 88 | 5 13 |
| John W. Grasin, ag't | 1 53 | 1 64 | 2 93 |
| Maryland Coal Co | 4 00 | 4 21 | 7 75 |
| Fractions | | | 3 |
| | 1,307 45 | 1,381 43 | 2,512 30 |

432 *Notice of continuance of reference.*

In the supreme court of the District of Columbia.

J. J. ALBRIGHT ET AL. *vs.* SAMUEL EMERY ET AL. } No. 5697. Equity doc.

This cause having been referred to me to state indebtedness, &c., notice is hereby given that I shall proceed with the said reference on Wednesday, the 7th day of May, 1879, at 12 o'clock m., at my office, No. 482 Louisiana avenue.

JAS. G. PAYNE, *Auditor.*

MAY 3, 1879.

Thod. Eiker, being duly sworn, says that he delivered a copy of the foregoing notice at each of the offices of the following: Ross and Dean, Thomas J. Miller, and Augustus S. Worthington.

THOD. B. EIKER.

Sworn to and subscribed before me this 3rd day of May, 1879.

JAS. G. PAYNE, *Auditor.*

433 FRIDAY, *May* 9, 1879—1 o'clock p. m.

Present, Mr. Worthington, for the complainants, and Mr. Dean, for the defendants.

WM. E. BARKER, a witness produced by the complainants, being duly sworn, deposes as follows:

By Mr. WORTHINGTON:

Q. Mr. Barker, are you one of the complainants in this case?

A. Yes, sir.

Q. Please produce the notes and other evidences of indebtedness which the plaintiffs now hold against the Emery Coal Co.

A. I produce the following notes and check signed by the Emery Coal Co., by E. E. Burrough, and bearing the following dates and amounts: May 13, 1877, $2,529.16; May 14, 1877, $3,500; May 19, 1877, $2,731.50; May 25, 1877, $2,746.26; June 2, 1877, $2,529.16; June 5, 1877, $2,096.27; June 15, 1877, $2,096.27; and a check dated July 11, 1877, on the National Metropolitan Bank, for $375, with notice of protest dated the 13th of July, 1877.

434 (These papers are offered in evidence by the complainants' counsel, and are hereto attached and marked Exhibits J. G. P. Nos. 1 to 8, inclusive.)

Q. Please state whether the complainants are still the holders of the papers.

A. Yes, sir.

Q. How many of them have been paid?

A. None of them.

Cross-examination by Mr. DEAN:

Q. Mr. Barker, can you state the total amount of the indebtedness of the Emery Coal Co. to Langdon, Albright and Co. on the 1st of May, 1877?

A. I cannot without reference to the books.

Q. Can you state the total indebtedness of that company to your firm on the 1st day of April, 1877?

A. I cannot without reference to the books.

Q. Can you state it on the 1st of March, 1877?

A. I cannot without reference to the books.

Q. Can you state it on the 1st of Feb'y?

A. I can by reference to the books.

Mr. DEAN. I will ask you then to examine those books and prepare to answer those questions at the next meeting, showing the
435 amount and shape of the indebtedness of the firm at each of the dates and the payments on account of the indebtedness.

(All the questions and answers of this cross-examination are objected to as immaterial and incompetent by complainants' counsel.)

Adjourned until Saturday, 1 o'clock p. .

SATURDAY, *May* 10, 1879—1 o'clock p. m.

Present, Messrs. Worthington and Dean.

The hearing is resumed and Mr. Barker appears, and in answer to the question compiled at the last meeting produces a list of notes given by the Emery Coal Co. to the complainants after the 1st of Feb'y, 1877, which is filed by the defendants' solicitor and marked "Exhibit J. G. P. No. 9."

J. J. ALBRIGHT, a witness produced by the complainants, being duly sworn, deposes as follows:

436 (It is agreed by counsel that the deposition of Mr. Albright about to be taken, and the exhibits to be filed with his deposition, shall be considered as part of the evidence in the case to be used before the court in general term, but not to be used before the auditor or to be considered as reopening the case as heard before the judgment in the special term.)

By Mr. WORTHINGTON:

Q. Are you one of the complainants in this case?

A. Yes, sir.

Q. And have been heretofore examined?

A. Yes, sir.

Q Please state whether you have produced all the bills of lading for coal sent by complainants in this case to the Emery Coal Co., to Samuel Emery, or to Samuel Emery and Co., after the 1st day of April, 1876.

A. All except a few bills of lading for coal that was shipped to Samuel Emery after the suit was brought.

Q. How many are there?

A. There are 72 bills of lading. Those after the 1st of April, 1876, are all to Samuel Emery or Samuel Emery and Co.

437 Q. How did the words "and Co." get there?

A. Some of the bills of lading came to us simply marked "Samuel Emery" and some of them "Samuel Emery and Co." The "& Co." on a few was evidently added by another person than the one that wrote them.

Q. Was that done here or somewhere else?

A. It came to us in that way. The bills of lading are made out at the wharfs and sent down to the general office of the company. I think the words "and Co." were put in by the clerks there to make them agree with the orders on file in the office of the company.

The WITNESS. Two of the bills of lading before referred to were made out in the name of George L. Sheriff, and for some reason after it got here it was transferred to the Emery Coal Co.

Q. Have you produced a copy of your ledger account with Samuel Emery and the Emery Coal Co. from Oct., 1874, to the time of the filing this bill?

438 A. Yes, sir.

(This paper, an extract from the ledger, is offered in evidence by complainants' counsel and marked "Exhibit J. G. P. No. 10.")

Q. Have you also produced a copy from the tonnage book of coal shipped to Samuel Emery and the Emery Coal Co. during the same period?

A. Yes, sir.

(This paper, a copy from the tonnage book, is offered in evidence by complainants' counsel and is marked "Exhibit J. G. P. No. 11."

Complainants' counsel also offers in evidence the 72 bills of lading produced by the witness, defendants' counsel stating that an agreement to that effect had been heretofore made by complainants' counsel, and the same are herewith filed and marked "Exhibit J. G. P. No. 12.")

Cross-examination by Mr. DEAN:

Q. Mr. Albright, is any of the coal that was shipped in pursuance to the order marked "Exhibit L., A. & Co. No. 36" charged
439 upon your ledger account, a copy of which is marked "Exhibit J. G. P. No. 10," to Samuel Emery?

A. No, sir.

Q. How was the coal shipped in pursuance to the order marked "Ex. L., A. & Co." charged upon your ledger account?

A. To the Emery Coal Co.

Q. Is your testimony in regard to the charges in the bills of lading based upon a personal knowledge of the fact?

A. No, sir.

Q. Does Exhibit J. G. P. No. 11 conform in size and ruling to the pages in your tonnage book?

A. It is very nearly. I think they are pages taken out of the tonnage book. Mr. Barker can answer that.

Mr. BARKER recalled by complainants' counsel.

By Mr. WORTHINGTON:

Q. Please look at the 2d page of the Ex. J. G. P. No. 11, at
440 the words in pencil "charged to Emery Coal Co.," and state whether those words are in the original book.

A. They are written in pencil in the original book.

Q. In whose handwriting?

A. In my handwriting.

Q. Have you made a statement showing the indebtedness of the Emery Coal Co. to the complainants in this case on the 16th of May, 1877?

A. We have made this statement.

(This paper is produced, and is offered in evidence by complainants' counsel, and is marked "Ex. J. G. P. No. 13.")

(Counsel for complainants hands witness a paper.)

Q. What is this paper?

A. That is a press copy from the letter-book of the order given by the Emery Coal Co., and dated April 6, 1877, for 4,500 tons of coal.

(This paper is offered in evidence by complainants' counsel, and is marked "Exhibit J. G. P. No. 14.")

Q. What became of the original?

A. Mr. Burrough kept the original.

441 Q. What proportion of the coal furnished the Emery Coal Co. by the complainants in the months of May and June, 1877, was supplied under the order which you have produced?

A. All except 1,000 tons ordered April 11, 1877, and one cargo Lykens Valley coal, which was worth $1,368.50, being 391 tons, shipped on the 25th of May.

Cross-examination by Mr. DEAN:

Q. Were the notes mentioned in Ex. J. G. P. No. 9, and marked "paid," paid at maturity?

A. I believe they were.

Q. Were they paid in cash or notes?

A. Some were paid in cash and some were renewed.

SAMUEL EMERY, being duly sworn, deposes as follows:

By Mr. WORTHINGTON, complainants' counsel:

Q. Please state what promissory notes or other evidence of indebtedness you received from the Emery Coal Co. in the month of July,
442 1877, as collateral for their promissory note in your favor for $4,750, referred to in this case.

A. I received the notes following:

| | | |
|---|---|---|
| R. McDonald, | July 2, at 30 days | $298 38 |
| " " | " " " 60 " | 298 38 |
| Joseph B. Glotzbach, | " " " 60 " | 231 50 |
| Thwing and Hitchcock, July 2, 1877, at 3 mo's | | 121 50 |
| R. Collins, July 5, 1877, at 60 days | | 501 00 |
| ($100 of that note was paid.) | | |
| R. Andrews, July 9, 1877, at 90 days | | 361 46 |
| J. H. Baum, July 10, at 2 months | | 180 97 |
| Washington Brick Co., July 10, 1877, at 3 mo's | | 1,318 57 |
| Mineral Springs Co. (overdue, and it isn't worth a sixpence) | | 750 00 |
| Aggregate | | $4,061 76 |

Q. What payments have been made to you on account of these notes, or any of them, since you so received them as collateral?

A. The following have been paid in full: Thwing and Hitchcock, J. H. Baum, and Washington Brick Co. Those are all that were paid in full. Of the others I have collected the amounts following: First
443 note of McDonald, $26.38; second note, $58.89; Glotzbach note, $10; note of R. Collins, $104.85; and on note of R. Andrews, $326.54. I sold the Mineral Spring note for $200, which was all that it was worth.

Cross-examination by Mr. DEAN:

Q. Mr. Emery, did you pay any notes that you had given the Emery Coal Co. as accommodation paper after their failure and assignment?

(Objected to by complainants' counsel as not relating to anything asked the witness in chief.)

A. I did not.

Q. What notes did you pay?

A. I paid a 30-day note given on the 21st day of June, for which I received those collaterals as security, of $4,750, with interest. I paid another note given on the 22d day of June, at 60 days, at maturity, for $1,500, with interest. Both were paid after the Emery Coal Co. failed.

Q. Did you receive any collateral for the $1,500 note?

444 A. I did not.

Complainants' testimony closed.

Adjourned until Wednesday, 1 o'clock p. m.

445 *Exh. J. G. P. No.* 10 *to auditor's report.—Filed Jun'* 13, 1879. R. J. MEIGS, *clerk.*

5697. Eq. doc. 17.

DR. SAMUEL EMERY. CR.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1874. | | | | | 1874. | | | | | |
| October | 1 | To P. & R. C. & I. Co. | 35 | 3,366 85 | October | 12 | By bills receivable.. | 40 | 3,419 03 |
| | 12 | " interest..... | 40 | 52 18 | | | | | |
| | | | | 3,419 03 | | | | | 3,419 03 |
| November | 6 | " P. & R. C. & I. Co. | 43 | 1,728 40 | Novem. | 16 | By bills receivable.. | 50 | 3,722 90 |
| | 15 | " Columbia sales... | 50 | 1,939 50 | | | | | |
| | 16 | " interest..... | 50 | 55 00 | | | | | |
| | | | | 3,722 90 | | | | | 3,722 90 |
| 1875. | | | | | | | | | |
| May | 1 | " P. & R. C. & I. Co. | 64 | 1,757 25 | May | 1 | By bills receivable.. | 64 | 1,788 00 |
| | 1 | " interest..... | 64 | 30 75 | | | | | |
| | | | | 1,788 00 | | | | | 1,788 00 |
| May | 15 | " D. & H. C. Co.... | 65 | 4,721 83 | May | 15 | By cash..... | 28 | 3,076 20 |
| | " | " commission ⅜... | 65 | 55 10 | | 26 | " " ..... | 28 | 1,700 73 |
| | | | | 4,776 93 | | | | | 4,776 93 |
| 1875. | | | | | | | | | |
| July | 1 | " P. & R. C. & I. Co. | 67 | 4,335 30 | July | 8 | By bills receivable.. | 69 | 4,371 80 |
| | 8 | " com. ⅜ ..... | 69 | 20 50 | | 6 | " A. Langdon..... | 69 | 32 00 |
| | " | " interest..... | 69 | 77 50 | | 8 | " A. L. Barber & Co. | 69 | 29 50 |
| August | 5 | " P. & R. C. & I. Co. | 71 & 72 | 29,921 91 | Aug. | 7 | " bills receivable.. | 74 | 11,000 00 |
| | 5 | " com. ⅜ ..... | 73 | 84 07 | | 10 | " " " ... | 74 | 19,595 24 |
| | 10 | " interest..... | 74 | 589 26 | | | | | |
| | | | | 35,028 54 | | | | | 35,028 54 |
| Septem. | 6 | " P. & R. C. & I. Co. | 79 | 6,948 23 | Sept. | 18 | By bills receivable.. | 83 | 7,083 33 |
| | 18 | " interest..... | 83 | 135 10 | | | | | |
| | | | | 7,083 33 | | | | | 7,083 33 |
| October | 1 | " P. & R. C. & I. Co. | 85 | 5,045 51 | October | 12 | " " " .. | 88 | 5,133 80 |
| | 12 | " interest..... | 88 | 88 29 | | | | | |
| | | | | 5,133 80 | | | | | 5,133 80 |
| October | 30 | " P. & R. C. & I. Co. | 90 | 8,776 64 | Novem. | 13 | By bills receivable.. | 94 | 6,765 36 |
| Novem. | 13 | " interest..... | 94 | 116 36 | | 23 | " cash..... | 40 | 1,600 00 |
| Decem. | 3 | " P. & R. C. & I. Co. | 98 | 12,835 57 | Decem. | 18 | " A. Langdon..... | 101 | 173 00 |
| | 18 | " interest..... | 101 | 197 43 | | " | " bills receivable.. | 101 | 11,479 40 |
| | | | | | | " | " P. & R. C. & I. Co. | 102 | 1,380 60 |
| | | | | | 1876. | | | | |
| | | | | | Jan'y | 8 | " commission ⅜... | 105 | 166 78 |
| | | | | | | 8 | " cash..... | 44 | 360 86 |
| | | | | 21,926 00 | | | | | 21,926 00 |

446 DR. EMERY COAL CO., WASHINGTON, D. C. CR.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1876. | | | | | | | | | | |
| May | 1 | To P. & R. C. & I. Co. | 113 | 28,303 30 | May | 12 | By bills receivable.. | 117 | 29,741 57 |
| | " | " com. ⅜ ..... | " | 11 43 | | | | | |
| | 2 | " P. & R. C. & I. Co. | " | 915 32 | | | | | |
| | 12 | " interest..... | 117 | 511 52 | | | | | |
| | | | | 29,741 57 | | | | | 29,741 57 |
| July | 6 | " P. & R. C. & I. Co | 124 | 1,376 50 | July | 14 | By bills receivable.. | 127 | 1,400 59 |
| | 14 | " interest..... | 127 | 24 09 | | | | | |
| | | | | 1,400 59 | | | | | 1,400 59 |
| July | 21 | " interest..... | 128 | 90 | July | 21 | By bills receivable.. | 128 | 6,090 |
| Aug. | 8 | " P. & R. C. & I. Co | 129 | 6,180 36 | Aug. | 10 | " " " .. | 132 | 3,500 |
| | 10 | " interest..... | 132 | 53 79 | | " | " " " .. | " | 2,702 44 |
| | " | " cash..... | 61 | 3,446 21 | Sept. | 18 | " " " .. | 138 | 7,526 73 |
| | " | " interest..... | 132 | 46 48 | | | | | |

*Emery Coal Co.*—Continued.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1876. | | | | | | | | | | | |
| Sept. | 15 | " P. & R. C. & I. Co. | 137 | 9,872 88 | | | | | | | |
| | 18 | " interest | 138 | 129 45 | | | | | | | |
| | | | | 19,819 17 | | | | | | | 19,819 17 |
| Octo. | 5 | " P. & R. C. & I. Co. | 142 | 3,819 36 | Oct. | 5 | By P. & R. C. & I. Co. | 142 | 2,362 50 | | |
| | " | " A. P. McCauly & Co | " | 1,947 81 | | " | " " " " | " | 599 20 | | |
| | 9 | " interest | 144 | 49 | | 9 | " bills receivable | 144 | 2,854 47 | | |
| | | | | 5,816 17 | | | | | 5,816 17 | | 5,816 17 |
| Oct. | 19 | To cash | 67 | 4 94 | Nov. | 4 | By bills receivable | 151 | 20,000 00 | | |
| Nov. | " | " " | " | 30 09 | | 8 | " " " | " | 11,276 | | |
| | 2 | " " | " | 34 95 | | " | " commission | " | 435 | | |
| | " | " P. & R. C. & I. Co. | 147 | 25,639 75 | | 11 | " bills receivable | 154 | 804 50 | | |
| | " | " Heim & Goodwill | 148 | 5,482 70 | | | | | | | |
| | 8 | " interest | 151 | 518 57 | | | | | | | |
| | 11 | " cash | 69 | 804 50 | | | | | | | |
| | | | | 32,515 50 | | | | | | | 32,515 50 |
| Novem. | 13 | " cash | 69 | 8,790 00 | Nov. | 13 | By bills receivable | 154 | 8,790 00 | | |
| 447 Dec. | 6 | " P. & R. C. & I. Co. | 158 | 14,600 58 | Novem. | 14 | By cash | 68 | 1,500 00 | | |
| | " | " J. Jos. Albright | " | 144 03 | | 22 | " bills receivable | 156 | 490 35 | | |
| | 13 | " commission | 163 | 12 25 | | 28 | " " " | " | 5,200 00 | | |
| | " | " bills receivable | " | 4,290 | Dec. | 4 | " " " | 157 | 170 00 | | |
| | " | " interest | 164 | 28 60 | | 7 | " E. N. Frisbie | 161 | 68 00 | | |
| | " | " " | " | 281 84 | | " | " cash | 72 | 144 03 | | |
| | | | | | | 13 | " commission | 164 | 1,116 20 | | |
| | | | | | | " | " bills receivable | " | 10,688 72 | | |
| | | | | 19,357 30 | | | | | 19,357 30 | | 19,357 30 |
| Dec. | 18 | " cash | 75 | 200 00 | Dec. | 30 | By bills receivable | 167 | 1,500 00 | | |
| | " | " " | " | 1,000 00 | | " | " " " | " | 9,180 00 | | |
| | 30 | " interest | 167 | 50 00 | Jan'y | 27 | " " " | 176 | 3,750 00 | | |
| | " | " " | " | 180 00 | | " | " cash | 80 | 5 89 | | |
| Jan'y | 6 | " cash | 77 | 250 00 | | | | | | | |
| | 11 | " " | 79 | 3,000 00 | | | | | | | |
| | 19 | " " | " | 5,200 00 | | | | | | | |
| | 24 | " " | 81 | 808 13 | | | | | | | |
| | 25 | " " | " | 22 52 | | | | | | | |
| | 27 | " " | " | 3,725 24 | | | | | | | |
| | | | | 14,435 89 | | | | | | | 14,435 89 |
| 448 1877 | | | | | 1877 | | | | | | |
| Jan'y | 30 | To interest | 176 | 102 | Jan'y | 27 | By bills receivable | 175 | 4,800 | | |
| Feb'y | 6 | " " | 178 | 53 33 | Feb'y | 6 | " " " | 178 | 5,000 | | |
| Feb'y | 9 | " cash | 83 | 3,200 | | 12 | " cash | 82 | 3,000 | | |
| | 12 | " " | " | 4,800 | | 20 | " bills receivable | 182 | 5,000 | | |
| | 19 | " " | 85 | 3,000 | Mar. | 10 | " " " | 187 | 2,500 | | |
| | 20 | " interest | 182 | 70 | | 13 | " " " | 188 | 2,555 | | |
| | 23 | " cash | 85 | 1,644 67 | | 17 | " cash | 86 | 19 14 | | |
| | 26 | " " | " | 2,700 | | 28 | " bills receivable | 190 | 10,150 | | |
| March | 3 | " " | 87 | 2,230 | Apr. | 11 | " " " | 196 | 1,144 | | |
| | 9 | " T. Edw'd Clark & Co | 187 | 396 25 | | 14 | " cash | 90 | 411 53 | | |
| | 10 | " interest | " | 35 54 | | | | | | | |
| | 13 | " cash | 87 | 1,500 | | | | | | | |
| | " | " interest | 188 | 38 60 | | | | | | | |
| | 19 | " cash | 87 | 3,500 | | | | | | | |
| | 28 | " interest | 190 | 131 53 | | | | | | | |
| April | 5* | " cash | 91 | 3,500 | | | | | | | |
| | 9 | " T. Edw'd Clark & Co | 194 | 747 75 | | | | | | | |
| | " | " cash | 91 | 700 | | | | | | | |
| | 11 | " " | " | 2,885 | | | | | | | |
| | 14 | " " | 91 | 3,345 | | | | | | | |
| | | | | 34,579 67 | | | | | | | 34,579 67 |
| April | 28 | To interest | 198 | 25 67 | April | 28 | By bills receivable | 198 | 5,745 | | |
| | 30 | " cash | 92 | 4,800 | | 30 | " cash | 92 | 1,300 | | |
| May | 8 | " " | 95 | 2,219 33 | | | | | | | |
| | | | | 7,045 00 | | | | | | | 7,045 |
| 449 May | 10 | " cash | 95 | 12 75 | May | 14 | By bills receivable | 203 | 5,000 | | |
| | 14 | " interest | 203 | 49 | June | 1 | " cash | 96 | 1,000 | | |

*Emery Coal Co.*—Continued.

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1877. | | | | | | | | | |
| | 15 | " bills receivable.. | 204 | 3,500 | | 2 | " " ..... | " | 1,000 |
| | " | " T. Edw'd Clark & Co..... | " | 795 24 | | 7 | " bills receivable.. | 211 | 5,058 32 |
| | 18 | " cash..... | 95 | 1,451 | | 8 | " " " .. | 212 | 6,145 01 |
| | 26 | " " ..... | " | 1,400 | | " | " cash..... | 96 | 1,808 03 |
| | 29 | " " ..... | " | 3,075 28 | | | | | |
| June | 5 | " P. & R. C. & I. Co. | 207 | 7,884 09 | | | | | |
| | " | " Heim & Goodwill. | 209 | 1,722 50 | | | | | |
| | 7 | " interest..... | 211 | 58 32 | | | | | |
| | 8 | " " ..... | 212 | 63 18 | | | | | |
| | | | | 20,011 36 | | | | | 20,011 36 |
| June | 21 | To cash..... | 97 | 608 12 | June | 14 | By J. W. Robertson. | 215 | 43 75 |
| | 22 | " interest..... | 217 | 48 34 | | 21 | " cash..... | 96 | 608 12 |
| July | 6 | " P. & R. C. & I. Co | 219 | 4,144 20 | | 22 | " bills receivable.. | 216 | 4,192 54 |
| | " | " cash..... | 99 | 375 | July | 11 | " cash..... | 98 | 375 |
| | 16 | " " ..... | " | 377 05 | | | | | *5,219 41 |
| | " | " " ..... | " | 3,500 | | | | | |
| August | 4 | " " ..... | 101 | 2,529 16 | | | | | |
| | 15 | " " ..... | " | 2,529 16 | | | | | |
| | 22 | " " ..... | 103 | 2,731 50 | | | | | |
| | 28 | " " ..... | " | 2,746 26 | | | | | |
| Septem. | 8 | " " ..... | 105 | 2,096 27 | | | | | |
| | 18 | " " ..... | 107 | 2,096 27 | | | | | |
| | | *18,561 92 | | *23,781 33 | | | | | |

*In pencil in original.

| Date. | No. manifest. | Kind of coal. | Steamboat. | Broken. | Egg. | Stove. | Chestnut. | Total. | Remarks. |
|---|---|---|---|---|---|---|---|---|---|
| 1874. | | | | | | | | | |
| Sept. 30 | P. R. | H. W. A | | | 203 | | | 203 00 | |
| " | " | F. B. W. A | | | 111 | | | 111 00 | |
| " | " | " " | | | | 82 | | 82 00 | |
| " | " | H. W. A | | 105 | | | | 105 00 | |
| " | " | " " | | | 102 | | | 102 00 | |
| " | " | " " | | | | | 44 00 | 44 00 | |
| | | | | 105 | 416 | 82 | 44 | 647 | |
| Octo. 10 | P. R. | Alaska R. A | | | 50 | | | 50 | |
| " | " | " " | | | | 36 | | 36 | |
| " | " | F. B. W. A | | | | 110 | | 110 | |
| " | " | Schy'l R. A | | | | 105 | | 105 | |
| | | | | | 50 | 251 | | 301 | |
| 1875. | | | | | | | | | |
| April 5 | P. R. | H. W. A | | | | 165 | | | |
| " | " | Lykens Valley | | | | 165 | | 330 | Per schooner Vashti Sharp. |
| May 1 | | { Del. & Hud } | | 311 01 | | | | 311 01 | " N. M. Hawas. |
| 3 | | { Lackawanna } | | | 153 08 | | 165 11 | 318 19 | " Armenia. |
| 5 | | " | | | | 302 13 | | 302 13 | " H. W. Godfrey. |
| | | | | 311 01 | 153 08 | 302 13 | 165 11 | 932 13 | |
| June 5 | P. R. | Lykens Valley | | | 108 | 106 | | 214 | " Agnes Ripplier. |
| 24 | " | | 267 | | | | | 267 | " Mary Mankin. |
| 28 | | | | | | | 425 | 425 | " H. Thomas. |
| | | | 267 | | 108 | 106 | 425 | 906 | |
| July 8 | P. R. | F. B. W. A | | | | | 479 | 479 | " W. C. Bee. |

*Exh. No. J. G. P.* 11, *and rep.*—Continued.

| Date. | No. manifest. | Kind of coal. | Steamboat. | Broken. | Egg. | Stove. | Chestnut. | Total. | Remarks. |
|---|---|---|---|---|---|---|---|---|---|
| 2 | " | H. W. A | | 394 | | | | 394 | " Sarah J. Ford. |
| 10 | " | " " | | | 200 | 202 | | 402 | " A. J. Bently. |
| 16 | " | F. B. W. A | | | 296 | | | 296 | " A. Trudell. |
| 16 | " | " " | | | 133 | 252 | | 385 | " J. S. Leach. |
| 451 July 15 | " | H. W. A | | | | | | | |
| 17 | " | Sch. R. A | | 196 | | | 205 | 401 | " A. Townsend. |
| 20 | " | H. W. A | | | 117 10 | 175 10 | | 293 | " Woodruff Simms. |
| " | " | F. B. W. A | | | 206 | | | | |
| 20 | " | H. W. A | | | | 211 | | 417 | " Alice Belle. |
| 21 | " | F. B. W. A | | 332 | | | | 332 | " Geo. Benton. |
| 23 | " | Lykens Valley | | | 566 | | | 566 | " Geogie Clark. |
| " | " | F. B. W. A | | | 110 | 264 | | | |
| 24 | " | H. W. A | | | | | 156 | 530 | " M. Bradshaw. |
| 30 | " | H. W. A | | 591 | | | | 591 | " Maggie J. Lawrence. |
| " | " | F. B. W. A | | 464 | | | | 464 | " Tho's J. Tasker. |
| | | | | | 556 | | | 556 | " H. J. May. |
| | | | | 1,977 | 2,184 10 | 1,104 10 | 840 | 6,106 | |
| August 7 | " | H. W. A | 481 | | | | | 481 | " E. & L. Cordery. |
| 9 | " | Lykens Valley | | 229 | | | | | |
| 11 | | H. W. A | | | | 231 | | 460 | " H. S. Marlow. |
| | | Lykens Valley | | 194 | | | | | |
| | | | | | | 193 | | 387 | " F.W.C.Edwards. |
| | | | 481 | 423 | | 424 | | 1,328 | |
| 1875. Septem. 23 | P. R. | Lykens Valley | | | | | | | |
| 28 | " | F. B. W. A | | | | 400 | | 400 | " Archer & Reeves. |
| | | | | | | 441 | | 441 | " Jonathan May. |
| | | | | | | 841 | | 841 | |
| October 9 | P. R. | H. W. A | | | 106 | | 109 | 215 | " Agnes Ripplier. |
| 16 | " | " | | | 100 | | 108 | 208 | " W. B. McShain. |
| 19 | " | Shamokin | | | 222 | 400 | | 622 | J. F. Baker. |
| 19 | " | Schy'l red ash | | | 167 | 390 | | 557 | J. W. Leonard. |
| | | | | | 595 | 790 | 217 | 1,602 | |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Novem. | 1 | " | Lykens Valley | | 85 | 321 | | | 406 | J. G. Crannar. |
| | 4 | " | F. W. A | | | 444 | | | 444 | A. G. Ireland. |
| | 8 | " | " " | | | | 400 | | 400 | Archer & Reeves. |
| | 12 | " | H. W. A | | 393 | | | | 393 | Jesse S. Leach. |
| | 25 | " | F. B. W. A | | | 118 | 197 | | 315 | D. W. Vaughn. |
| | 26 | " | " " | | | 122 10 | 238 10 | | 361 | Althea. |
| | | | | | 478 | 1,005 10 | 835 10 | | 2,219 | |
| 452 | | | | | | | | | | |
| 1876. | | | | | | | | | | |
| April | 4 | P. R. | H. W. A | | 335 | | | | 335 | Deborah H. Diverty. |
| | 5 | " | " | 300 | | | | | 300 | Carrie. |
| | 13 | " | F. B. W. A | | | 394 | | | 394 | Lydia Middleton. |
| | 14 | " | " " | | | | | 198 | 198 | Morning Star. |
| | 15 | " | " " | | | | 300 | | 300 | Marie & Elizabeth. |
| | 17 | " | Schy'l red A | | | 362 | | | 362 | L. A. Danenhower. |
| | 18 | " | " " | | | | 392 | | 392 | Sarah J. Ford. |
| | 19 | " | H. W. A | 309 | | | | | 309 | Helen Rommel. |
| | | " | F. B. W. A | | | | 201 | | 201 | Grace Watson. |
| | 20 | " | Lykens Valley | | | | 340 | | 340 | And. H. Edwards. |
| | 21 | " | F. B. W. A | | | | | 250 | 250 | Lulu Linn. |
| | 21 | " | Schy. red A | | | 237 | | | 237 | Rose M. Devitt. |
| | 22 | " | " " | | | | 186 | | 186 | Jas. Marsh. |
| | 24 | " | H. W. A | | 395 | | | | 395 | Rich'd W. Tull. |
| | 25 | " | " " | | 357 | | | | 357 | Mary E. Smith. |
| | 25 | " | " " | | 339 10 | | | | 339 10 | L. Q. Wishart. |
| | 26 | " | " " | | 460 | | | | 460 | Walter Palmer. |
| | 27 | " | " " | | 532 | | | | 532 | Emme Aery. |
| | 28 | " | " " | | 402 | | | | 402 | Oaks Ames. |
| | 29 | " | " " | | 212 | | | | 212 | Agnes Ripplier. |
| | | | | 609 | 3,032 10 | 993 | 1,419 | 448 | 6,501 10 | |

(April 4 to 29, marked in lead-pencil:) Ch'ge to Emery Coal Co.

## EMERY COAL CO., WASHINGTON, D. C.



| Date. | No. manifest. | Kind of coal. | Broken. | Egg. | Stove. | Chestnut. | Total. | Remarks. |
|---|---|---|---|---|---|---|---|---|
| 1876. | | | | | | | | |
| June 20 | ..... | F. B. W. A | ..... | ..... | ..... | ..... | ..... | |
| July 12 | P. R. | Lyk. Val | ..... | 307 | ..... | ..... | 307 | |
| 13 | " | F. B. W. A | ..... | ..... | ..... | ..... | ..... | |
| 14 | " | Shamokin | ..... | ..... | 379 | ..... | 379 | |
| Aug. 2 | " | F. B. W. A | ..... | ..... | 390 | ..... | 390 | |
| 22 | " | Lyk. Val | ..... | ..... | 378 | ..... | 378 | |
| 24 | " | F. B. W. A | ..... | 546 | ..... | ..... | 546 | |
| 29 | " | Lyk. Val | ..... | 428 | ..... | ..... | 428 | |
| " | " | F. B. W. A | ..... | ..... | ..... | 342 | 342 | |
| 28 | " | Lyk. Val | ..... | ..... | 529 | ..... | 529 | |
| | | | ..... | ..... | ..... | 392 | 392 | |
| | | | ..... | 122 | 167 | ..... | 289 | T. Ed. Clark. |
| Sept. 1 | P. R. | F. B. W. A | ..... | 1,096 | 1,843 | 734 | 3,673 | |
| 7 | " | | ..... | ..... | ..... | ..... | ..... | |
| 20 | " | H. W. A | ..... | 316 | ..... | ..... | 316 | |
| | | | ..... | 391 | ..... | ..... | 391 | |
| | | | 550 | ..... | ..... | ..... | 550 | |
| | | | 550 | 707 | ..... | ..... | 1,257 | |
| Octob. 5 | P. R. | H. W. A | 387 10 | ..... | ..... | ..... | 387 10 | |
| 6 | " | Schy'l R. A | ..... | ..... | 500 | ..... | 500 | |
| " | " | Lyk. Val | ..... | ..... | 147 | ..... | 147 | |
| 10 | " | " | ..... | ..... | ..... | ..... | 385 | |
| " | " | " | ..... | 385 | ..... | ..... | 410 | |
| 11 | " | H. W. A | ..... | 410 | ..... | ..... | 540 | |
| " | " | L. Valley | 540 | ..... | ..... | ..... | 451 | |
| 12 | " | F. B. W. A | ..... | 231 | 220 | ..... | 407 | |
| 13 | " | " | ..... | ..... | ..... | 407 | 722 | |
| 16 | " | " | ..... | ..... | 722 | ..... | 340 | |
| " | " | Lyk. Val | ..... | ..... | 224 | ..... | 167 | B. Valley. |
| " | " | Bear Valley | 116 | ..... | 64 | ..... | 450 | |
| 18 | " | F. B. W. A | ..... | 103 | 450 | ..... | 443 | |
| " | " | " | ..... | ..... | ..... | ..... | 215 | Bear Valley. |
| " | " | Bear Valley | ..... | 443 | 89 | ..... | 417 | |
| 23 | " | F. B. W. A | ..... | 126 | ..... | ..... | 395 | |
| 24 | " | " | ..... | 417 | ..... | ..... | 677 | Bear Valley. |
| 21 | " | " | ..... | 395 | ..... | ..... | 442 | |
| 26 | " | Lyk. Valley | ..... | 173 | 504 | ..... | 532 | |
| 27 | " | F. B. W. A | ..... | ..... | 442 | ..... | 450 | Bear Valley. |
| 31 | " | Bear Valley | ..... | ..... | 532 | ..... | | |
| | | | ..... | 101 | 349 | ..... | | |
| | | | 1,043 10 | 2,784 | 4,243 | 407 | 8,477 10 | |

| Date. | No. manifest. | Kind of coal. | Steamboat. | Broken. | Egg. | Stove. | Chestnut. | Total. |
|---|---|---|---|---|---|---|---|---|
| Nov. 1 | P. R. | Lyk. Valley | | | | 402 | | 402 |
| 2 | " | F. B. W. A | | | | 425 | | 425 |
| " | " | Sch'ra | | | | 420 | | 420 |
| " | " | L. Valley | | | | 679 | | 679 |
| 3 | " | H. W. A | 416 | | | | | 416 |
| 4 | " | F. B. W. A | | | | | 650 | 650 |
| 6 | " | " | | | 543 | | | 543 |
| | | " | | | 586 | | | 586 |
| | | | 416 | | 1,129 | 1,926 | 650 | 4,121 |
| 1877. | | | | | | | | |
| May 2 | P. R. | H. W. A | | 365 | | | | 365 |
| 5 | " | F. B. W. A | | | 375 | | | 375 |
| " | " | " | | | | | 330 | 330 |
| " | " | " | | | | 325 | | 325 |
| 9 | " | Bear Valley | | | | 530 | | 530 |
| 16 | " | Sch'l R. A | | | 83 | 316 | | 399 |
| " | " | F. B. W. A | | | | 540 | | 540 |
| 25 | " | Lyk. Valley | | | | 391 | | 391 |
| | | | | 365 | 458 | 2,102 | 330 | 3,255 |
| June 15 | P. R. | F. B. W. A | | | 537 | | | 537 |
| 16 | " | H. W. A | 411 | | | | | 411 |
| 18 | " | F. B. W. A | | | 326 | | | 326 |
| 19 | " | H. W. A | | 352 | | | | 252 |
| | | | 411 | 352 | 863 | | | 1,626 |

Filed June 13, 1879. R. J. Meigs, clerk.

455 *Exhibit J. G. P. 12 to auditor's report, 72 B. L's.—Filed June 13, 1879.—R. J. MEIGS, Clerk.*

5697. Eq. doc. 17.

No. 152; pier No. 13. H. W. A. coal.
Tons.
Lump,
Steamboat,
Broken, 335.
Egg,
Stove,
Chestnut,

Shipped by the Philadelphia & Reading Coal and Iron Co., in good order, on board the sch. called Deborah H. Diverty, of Cape May, N. J., whereof the undersigned is master for the present voyage, and now lying at the port of Philadelphia, and bound for Washington, D. C., three hundred & thirty-five tons, of 2,240 lbs., H. W. A. coal (as per margin), which I promise to deliver at the aforesaid port of Washington, D. C., in like good order (the dangers of the sea only excepted), unto Sam'l Emery, $\frac{c}{o}$ Langdon, Albright, or his assigns, he or they paying freight for the same at the rate of seventy-five cents per ton; and 24 hours after the arrival at the above-named port, and notice thereof to the consignee named, there shall be allowed for receiving said cargo at the rate of one day, Sundays and legal holidays excepted, for every hundred tons thereof, after which the cargo, consignee, or assignee shall pay demurrage at the rate of eight cents per ton a day, Sundays and legal holidays not excepted, upon the full amount of cargo, as per this bill of lading, for each and every day's detention, and pro rata for parts and portions of a day beyond the days above specified, until the cargo is fully discharged, which freight and demurrage shall constitute a lien upon said cargo.

In witness whereof the master or purser of said vessel hath affirmed to 5 bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Philadelphia, this 4' day of April, 1876.

335 tons in hold.
" on deck.

F. WILLIAMS.

Freight, 75c per ton.

(On margin:) Received of the Philadelphia & Reading Coal & Iron Co., advanced on account of freight, sixteen $\frac{75}{100}$ dollars.

Total tons, 335.

$16.75.

F. WILLIAMS.

456 SCHEDULE BILLS OF LADING.

| Consignee. | Date. |
|---|---|
| Samuel Emery | April 5, 1876. |
| Samuel Emery | April 13, 1876. |
| Samuel Emery | April 14, 1876. |
| Samuel Emery | April 15, 1876. |

Samuel Emery.....April 17, 1876.
Samuel Emery.....April 18, 1876.
Samuel Emery.....April 19, 1876.
Samuel Emery.....April 19, 1876.
Samuel Emery & Co.....April 20, 1876.
Samuel Emery & Co.....April 21, 1876.
Samuel Emery.....April 21, 1876.
Samuel Emery & Co.....April 22, 1876.
Samuel Emery.....April 24, 1876.
Samuel Emery & Co.....April 25, 1876.
Samuel Emery & Co.....April 25, 1876.
Samuel Emery.....April 26, 1876.
S. Emery.....April 27, 1876.
Samuel Emery & Co.....April 28, 1876.
Samuel Emery & Co.....April 29, 1876.
Emery Coal Co.....June 20, 1876.
Emery Coal Co.....July 12, 1876.
Emery Coal Co.....July 13, 1876.
Emery Coal Co.....July 14, 1876.
Emery Coal Co.....August 2, 1876.
Emery Coal Co.....August 22, 1876.
457 Emery Coal Co.....August 24, 1876.
Emery Coal Co.....August 28, 1876.
Emery Coal Co.....August 29, 1876.
Emery Coal Co.....August 29, 1876.
Emery Coal Co.....September 1, 1876.
Emery Coal Co.....September 7, 1876.
Emery Coal Co.....September 20, 1876.
Emery Coal Co.....October 5, 1876.
Emery Coal Co.....October 6, 1876.
Emery Coal Co.....October 10, 1876.
Emery Coal Co.....October 10, 1876.
Emery Coal Co.....October 11, 1876.
Emery Coal Co.....October 11, 1876.
Emery Coal Co.....October 12, 1876.
Emery Coal Co.....October 13, 1876.
Emery Coal Co.....October 16, 1876.
Emery Coal Co.....October 16, 1876.
Emery Coal Co.....October 18, 1876.
Emery Coal Co.....October 18, 1876.
Emery Coal Co.....October 18, 1876.
Emery Coal Co.....October 21, 1876.
Emery Coal Co.....October 23, 1876.
Emery Coal Co.....October 24, 1876.
Emery Coal Co.....October 26, 1876.
Emery Coal Co.....October 27, 1876.
Emery Coal Co.....October 31, 1876.
Emery Coal Co.....November 1, 1876.
Emery Coal Co.....November 2, 1876.
458 Emery Coal Co.....November 2, 1876.
Emery Coal Co.....November 3, 1876.

| | | |
|---|---|---|
| Emery Coal Co | November | 3, 1876. |
| Emery Coal Co | November | 3, 1876. |
| Emery Coal Co | November | 4, 1876. |
| Emery Coal Co | November | 6, 1876. |
| Emery Coal Co | May | 2, 1877. |
| Emery Coal Co | May | 5, 1877. |
| Emery Coal Co | May | 5, 1877. |
| Emery Coal Co | May | 5, 1877. |
| Emery Coal Co | May | 9, 1877. |
| Emery Coal Co | May | 16, 1877. |
| Emery Coal Co | May | 16, 1877. |
| Emery Coal Co | May | 25, 1877. |
| Emery Coal Co | June | 15, 1877. |
| Emery Coal Co | June | 16, 1877. |
| Emery Coal Co | June | 18, 1877. |
| Emery Coal Co | June | 19, 1877. |

It is agreed that the bills of lading filed as Exhibit J. G. P. 12 in this case are in substance like that dated April 4, 1876, and copied above in full, except as to dates and name of consignee, and that the foregoing list correctly sets forth said dates and names respectively. It is further agreed that said list may be used in the record in lieu of the original bills of lading.

A. G. WORTHINGTON,
*Of Counsel for Complainants.*
S. S. HENKLE,
*Of Counsel for Def't Sam'l Emery.*

27TH SEP., '80,

459 *Exh. J. G. P.* 13 *to auditor's report.—Filed June* 13, 1879.—R. J. MEIGS, *Clerk.*

2. 5697. Eq. doc. 17.

| | | | |
|---|---|---|---|
| Total amount notes & check unpaid | | | $18,603 62 |
| Deduct check for cash loaned (July 11) | | | 375 00 |
| | | | $18,228 62 |
| Less coal shipped after May 16th: | | | |
| May 25. S. V. stove, 391 tons | | $1,368 50 | |
| June 15. F. V. egg, 537 " | | 1,342 50 | |
| Advances on fr't & insurance | | 37 83 | |
| " 16. Steamboat, 411 tons | | 1,027 50 | |
| Advances & insurance | | 28 50 | |
| " 18. Egg, 326 tons | | 815 00 | |
| Insurance | | 6 19 | |
| " 19. Broken, 352 tons | | 880 00 | |
| Insurance | | 6 68 | |
| | | | 5,512 70 |
| Amount to May 16th still unpaid for | | | $12,715 92 |

460 *Exh. J. G. P.* 14 *to aud. rep.—Filed June* 13, 1879.—R. J. MEIGS, *Clerk.*

5697. Eq. doc. 17.

APRIL 6TH, '77.

Sold to Emery Coal Co. coal as follows, at Port Richmond, Phila., free on board:

| | | | | | |
|---|---|---|---|---|---|
| 500 | tons hard white ash | st'b't, | @ | | $2 60 |
| 1,000 | " " " " | broken, | " | | 2 75 |
| 1,000 | " free bur. " | " stove, | " | | 2 85 |
| 1,000 | " " " " | " chestnut, | " | | 2 60 |
| 400 | " sch. R. ash | stove, | " | | 2 95 |
| 100 | " " " | egg, | " | | 2 70 |
| 4,000 | | | | | |
| 500 | " Bear Valley | stove, | " | | 3 25 |

To be shipped in April & May.

LANGDON, ALBRIGHT & CO.

Accepted.

THE EMERY COAL CO.,
By E. E. BURROUGH.

461 *Final decree ratifying auditor's report.*

In the supreme court of the District of Columbia, in special term, in equity.

JOHN J. ALBRIGHT ET AL.
*vs.*
SAMUEL EMERY ET AL. } No. 5697. Equity doc.

This cause came on to be heard at this term upon the pleadings and evidence and the report the auditor filed June 13, 1879, and was submitted to the court, and upon consideration thereof it is, this 23d day of June, 1879, ordered, adjudged, and decreed:

First. That the assignment made by said Emery Coal Company to the defendants, Mills Dean and John W. Ross, on the 18th day of July, 1877, and recorded in liber 381, folio 268 et seq., of the land records of the District of Columbia, be, and the same is hereby, set aside and declared void.

Second. That said report be, and the same is hereby, in all things confirmed.

Third. That the receivers in this case shall pay to the complainants, or their solicitors, from the fund of thirteen hundred and eighty-one dollars and forty-three cents ($1,381.43) in their hands the sum of twelve hundred and forty-six dollars and eighty-seven cents ($1,246.87), and shall distribute the remainder of said sum—one hundred and thirty-four dollars and fifty-six cents ($134.56)—to Thomas Potee and the sixteen other creditors whose names follow his in Schedule H annexed to said report, in the manner indicated by said Schedule H.

Fourth. That the clerk of this court shall pay to the complainants, or their solicitors, the sum of thirteen hundred and seven dollars and forty-five cents ($1,307.45), being the whole of the fund in the registry of the court, as shown by Exhibit F to said report.

462 Fifth. That Samuel Emery, called in the bill of complaint Samuel Emery, senior, shall pay to the complainants, or their solicitors, on or before the 14th day of July, 1879, the sum of twelve hundred and thirty-two dollars and thirty-seven cents ($1,232.37), being the fund in his hands, as shown by Exhibit D to said report, after deducting the sum of twelve hundred and seventy-nine dollars and ninety-three cents ($1,279.93) which he is authorized to retain as his proportion of the said fund, as shown by said Exhibit H; and that in default of such payment within the time above limited execution as at law may be issued against said Samuel Emery in favor of complainants to recover said sum of twelve hundred and thirty-two dollars and thirty-seven cents ($1,232.37), with interest from the 14th day of July, 1879.

Sixth. That the defendant Samuel Emery, called in the bill of complaint, Samuel Emery, senior, is indebted to the complainants in the further sum of fourteen thousand eight hundred and eighteen dollars and ninety-eight cents ($14,818.98), with interest from the 20th day of July, 1877, and that the defendant Charles C. Sailer is also liable to the complainants to the same amount, and that execution as at law may be issued against said Emery and Sailer, or either of them, in favor of the complainants, to recover said sum and interest.

Seventh. That the complainants' costs, hereafter to be taxed by the clerk, be paid out of the first moneys that hereafter shall come into the hands of the receivers.

*Appeal to gen'l term.*

From this decree the defendant Samuel Emery, senior, prays an appeal to the court in general term, which is allowed, and the penalty of his appeal bond is fixed at twenty thousand dollars.

By the court:

MAC ARTHUR, *Justice.*

* [The defendant Samuel Emery appealed.]

463 In the supreme court of the District of Columbia, June 27, 1879.

*Sailer declines appeal.*

ALBRIGHT ET AL. *vs.* EMERY ET AL. } No. 5697. Eq. doc. 17.

This day comes into open court Messrs. Ross & Dean, solicitors for Charles C. Sailer, one of the defendants, against whom the final decree was rendered in this cause on 23rd day of June, 1879, and on behalf of the said defendant Sailer declined and refused to appeal from said decree; and thereupon the defendant Samuel Emery, sr., prays an appeal in his own behalf, which is, this 27' day of June, 1879, allowed by the court.

By the court:

MACARTHUR, *Justice.*

* Erased in pencil in original.

464 *Appeal bond of Sam'l Emery.*

In the supreme court of the District of Columbia, the 27' day of June, 1879.

ALBRIGHT ET AL., PLAINTIFFS,
*vs.*
EMERY ET AL., DEFENDANTS. } No. .

The defendant, Samuel Emery, having appealed to the general term from the decree pronounced herein on the 23rd of June, 1879, in the equity court, and Matthew Emery, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

SAMUEL EMERY, *Appellant.*
M. G. EMERY, *Surety.*

Approved.

WALTER S. COX, *Just.*

465 *Decree of court in general term.—May* 12, 1880.

ALBRIGHT ET AL.
*v.*
EMERY ET AL. } 5697. Equity docket 17.

This cause came on to be heard on the pleadings, exhibits, and evidences, and was argued by counsel, on consideration whereof it is, this 12th day of May, 1880, ordered, adjudged, and decreed that the decree of the special term in this cause, so far as it charged the said Samuel Emery, sr., be reversed, and the bill as to the said Samuel Emery, sr., dismissed, and that the defendant, Samuel Emery, sr., recover of the complainants his costs herein, taxed at $ .

And the complainants pray an appeal to the Supreme Court of the United States, which is allowed.

By the court:

D. K. CARTTER,
*Ch'f Justice.*

466 In the supreme court of the District of Columbia, the 12th day of July, 1880.

JOHN JOSEPH ALBRIGHT, WILLIAM E. BARKER, and Andrew Langdon, partners trading under the firm-name and style of Langdon, Albright & Co.,
*vs.*
SAMUEL EMERY, SENIOR, ET AL. } No. 5697. In equity. On appeal.

Know all men by these presents that we, John Joseph Albright, William E. Barker, Andrew Langdon, and Joseph J. Albright are bound unto

the above-named Samuel Emery in the sum of one thousand dollars, to be paid to the said Samuel Emery, his executors or administrators; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 12' day of July, 1880.

Whereas the above-named John Joseph Albright, William E. Barker, and Andrew Langdon have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named John Joseph Albright, William E. Barker, and Andrew Langdon shall prosecute their said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN JOSEPH ALBRIGHT. [SEAL.]
WILLIAM E. BARKER. [SEAL.]
ANDREW LANGDON. [SEAL.]
JOS. J. ALBRIGHT. [SEAL.]

Sealed and delivered in presence of—
D. N. GREEN, as to John Joseph Albright.
GEORGE F. GRAHAM, as to William E. Barker.
GEORGE F. GRAHAM, as to Andrew Langdon.
D. N. GREEN, as to Joseph J. Albright.

Satisfactory to appellee.

ROSS & DEAN,
*Sol's for Emery, Sr., Def't.*

1880, July 13.
Approved.

CHARLES A. JAMES,
*Associate Justice.*

467 *Authentication of record.—Clerk's certificate.*

Clerk's office, supreme court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 28' day of Sept., 1880.
[SEAL.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
*Assistant Clerk.*

*Justice's certificate.*

I, David K. Cartter, chief-justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 28' day of Sept., 1880.

D. K. CARTTER, [SEAL.]
*Chief Justice.*

*Clerk's certificate to justice's official character.*

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief-justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 28' day of Sept., 1880.

[SEAL.] R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
*Assistant Clerk.*

(Indorsement on cover:) No. 159. John Jos. Albright, William E. Barker, & Andrew Langdon, partners as Langdon, Albright & Company, appellants, vs. Samuel Emery, sr., et al. Dist. of Col. supreme court. Filed 19th October, 1880.

104 650

# Supreme Court of the United States

October Term, 1883.

No. 159.

JOHN JOSEPH ALBRIGHT, WILLIAM E. BARKER, and ANDREW LANGDON, partners under the firm-name of LANGDON, ALBRIGHT & COMPANY,

*vs.*

SAMUEL EMERY, Senior.

## BRIEF FOR THE APPELLANTS,

A. S. WORTHINGTON,
Of Counsel for Appellants.

*Thomas McGill & Co., Law Printers, Washington, D. C.*

# Supreme Court of United States.

October Term 1883.—No. 159.

JOHN JOSEPH ALBRIGHT, WILLIAM E. BARKER, AND ANDREW LANGDON, AS FIRM OF LANGDON, ALBRIGHT & COMPANY, APPELLANTS,

*vs.*

SAMUEL EMERY, SENIOR.

## BRIEF FOR APPELLANTS.

### STATEMENT OF THE CASE.

In 1874 the firm of Langdon, Albright and Company were engaged in business in Washington City as wholesale dealers in coal. The appellee, Samuel Emery, a man of considerable means, residing in Washington, had boarding with him his son Samuel Emery, junior, and his son-in-law E. E. Burrough, young men without property of any kind. In the fall of 1874 the appellee started his son and son-in-law in business as retail dealers in coal, and arranged with Langdon, Albright and Company to sell coal to the young men or to him for them, (the precise nature of the arrangement being one of the disputed questions in the case,) the appellee agreeing to pay for the coal so furnished. From September, 1874, till the spring of 1876 the appellants delivered coal under this arrangement to the value of about $80,000, and the appellee paid for it. During this time Burrough, the son-in-law, was the active man in the busi-

ness, though it was transacted in the name of the appellee. Emery, jr., paid little attention to the affairs of the concern. The place of business of Emery (or his firm, as the case may be) was at a yard on the corner of First and B streets northwest, owned by the appellee, and at a wharf on the Potomac river, of which he had procured a lease from the owner.

Early in 1876 a change in this arrangement was conceived. The health of the appellee was not good, and he wished to be relieved of some of his labors. Burrough had married the daughter of C. C. Sailer, a man of very moderate means, and it was agreed that he should come into the business. There was a period of uncertainty as to the new arrangement lasting till the latter part of April, 1876, and during that period, on the 9th of March, 1876, Burrough gave the appellant a writen order for over 30,000 tons of coal, 12,000 tons to be delivered within two months, signing it "E. E. Burrough, manager for S. Emery & Company," which was accepted, (Record, 152, 207.) But on the 26th April, following, a notice, dated April 1, 1876, and signed Samuel Emery, was published in the Washington newspapers to the effect that Samuel Emery had disposed of his interest in the wood and coal business to Sailer, Burrough, and Emery, junior, and that they would thereafter conduct the business under the name of "Emery Coal Company," (208.)

The advertisement in question was observed by Albright, one of the appellants. Shortly afterwards he had some conversation with the appellee and with Burrough in relation to the new concern. These conversations and other circumstances hereinafter detailed induced the appellants to believe that the appellee was responsible for coal that might be furnished the Emery Coal Company, as he had been when the business was transacted in his name, and that the firm was doing a good business and was in a sound financial condition.

On the day before this advertisement was published the appellee received from "The Emery Coal Company" four promissory notes made by that firm, as follows:

| | |
|---|---|
| Note dated April 5, on demand, for..... | $10,000 00 |
| " " " 5, at 60 days, for..... | 4,000 00 |
| " " " 5, at 90 days, for..... | 4,000 00 |
| " " " 5, at 4 months..... | 3,170 85 |
| Total..... | $21,170 85 |

This sum was the difference between what he had expended in the business up to March 31, 1876, and the amount he had received, (61, 206, 207.) He receipted for these notes as "in settlement for my claim." To what extent this transaction was made known to the appellants is a question of fact in this case.

Between April 1, 1876, and Dec. 1, 1876, when the season closed, the appellants shipped to Samuel Emery, or Samuel Emery & Company, or the Emery Coal Company, coal to the value of over $90,000, for which from time to time they took the notes of the Emery Coal Company. (238, 239, 240, 230, 231.) All the shipments after April 29 were to the Emery Coal Company.

On the 6th of April, 1877, the appellants agreed to sell 4,500 tons of coal to the Emery Coal Company, (241.) Other orders to the amount of 1,391 tons were received and accepted in April and May. All this coal was shipped from Philadelphia by vessels to the Emery Coal Company between May 2 and June 19, 1877, (240,) the vesels having been chartered from four days to a week before the shipments, (191.) For this coal and for a balance of account from the previous year the appellants received the notes of the Emery Coal Company to the amount of $18,228.62, which bear date from May 12 to June 15, 1877.

On the 14th of June, 1877, an advertisement appeared in the Washington papers, signed by Sailer, Burrough and

Emery, jr., to the effect that the firm of the Emery Coal Company had been dissolved on the 16th day of May preceding by Sailer and Emery, jr., retiring from it, and that Burrough would continue the business at the old stand and under the old firm name, (2, 7, 14.) About a week afterwards Albright and Baker, two of the appellants, inquired of the appellee whether he would be responsible for coal furnished Burrough. He said he would not; and they furnished no more coal, (183, 195, 190.)

On the 18th day of July, 1877, Burrough and Emery, junior, (with their respective wives) describing themselves as "composing the Emery Coal Company," executed an instrument purporting to be an assignment of the assets of that firm to John W. Ross and Mills Dean, with power in them to sell the same and distribute the proceeds among the creditors of the firm according to a schedule annexed to the instrument, (8, 9.) In this schedule the appellants are put down as creditors in the sum of $18,228.62; Sailer in the sum of $8,500, and Samuel Emery in several sums aggregating $15,190.42 (10.) Sailer's claim for $8,500 was the amount which Burrough agreed to pay him for his interest in the firm when he retired from it, (128-9.) Of the amount stated to be due the appellee, $8,940.42 was the amount said to remain unpaid of the notes for $21,170.85, which he had received from the company in April, 1876; the remainder was money loaned the firm afterwards.

A few days before this assignment was made, the appellee and his son and Burrough made what they call a "settlement." The time of this transaction is not absolutely fixed, but it is dated July 10, and that is certainly the earliest date possible under the evidence, (86, 205.) In the papers representing this settlement, so called, the Emery Coal Company is charged with three of the notes so given by it to the appellee in April of 1876, and with interest thereon, and with rent of the yard at First and B streets, and a due bill for $356, and a year's interest thereon, the

whole aggregating $19,612.28, and it is credited with cash paid and wood and coal delivered amounting to $10,156.86, showing a balance still due the appellee of $8,940.42, (201 to 205.)

Two or three days before the assignment was made Burrough turned over a number of promissory notes belonging to the Emery Coal Company, the aggregate par value of which was over $4,000 (221), to Emery as collateral security for a note of $4,750 held by him for money loaned the company in 1877. Emery, after strenuously denying the fact (73, 82), finally admitted that he had notice of the failing condition of the company when he took some of these notes, (82, 83, 84.) 71 to 74

Two days after the assignment was executed (that is, on the 20th day of July,) it was recorded, (9.) On the same day the bill in this case was filed, Langdon, Albright & Company being the complainants and Samuel Emery, senior, Samuel Emery, junior, Burrough, Sailer, and the assignees Ross & Dean being made defendants. The bill sets forth the dealings of the complainants with the appellee and his son and Burrough prior to April, 1876, and avers that after the firm-name was changed to the Emery Coal Company, as well as before, the complainants in selling coal to it on credit relied upon the appellee's responsibility, and that down to the 14th of July, 1877, all the defendants (Ross & Dean being inadvertently included in this allegation) had given the complainants to understand that they (the complainants) were the only creditors to whom the Emery Coal Company was indebted in any considerable amount. The bill then states the publication of the antedated notice of dissolution hereinbefore mentioned, and the making of the assignment to Ross & Dean, and prays that the assignment may be set aside; that a receiver be appointed to wind up the affairs of the firm; that the defendants be enjoined from disposing of the firm assets; that it shall be ascertained who composed the Emery Coal Company from time

to time and the amounts due from its members to the complainants; that Emery senior, Emery junior, Sailer, and Burrough be required to pay the indebtedness of the firm to the complainants, and for general relief, (1 to 6.)

Samuel Emery, senior, by his answer denies that he was in business with his son and Burrough prior to March, 1876, and says that they were "only clerks." He denies that the complainants furnished coal on credit to the Emery Coal Company after that time, relying on his connection with that firm; and he denies also that the indebtedness of the firm to him was concealed from the complainants (12 to 15.) On this answer issue was duly joined (45.)

Ross and Dean, before the bill was filed, having advertised the sale of a part of the assets of the Emery Coal Company, by consent sold the assets so advertised and paid the proceeds into court. Receivers were appointed to dispose of the remaining assets. The assignee's sale netted $1,605.35 (32, 34.) The receivers collected $2,412. Two days before the assignment, July 16, Burrough in a note to complainants had put the value of the assets at $40,000 (109, 110.)

Depositions having been taken on both sides, the cause came on for final hearing upon bill, answer, and proofs in the court below in special term, and was argued. The presiding justice held, among other things, that Emery, senior, is, and since April 1, 1876, has been, estopped, as to the complainants, from setting up any claim as a creditor of the Emery Coal Company, growing out of the above-described notes, dated April 5, for $21,170.85, and referred the case to the auditor to ascertain and report, among other things, the amount the complainants were entitled to recover from Emery, senior, which it was ordered should be the difference between their proportion of the proceeds of the general assets of the Emery Coal Company and the amount of that firm's indebtedness to them, provided that he should not be required to pay more than the amount he

had received from the Emery Coal Company on account of said indebtedness of $21,170.85, (212, 213.) [This order took the place of a decree to the same effect previously made, as to which there was some question whether it was not appealable,] (209, 211.)

The auditor reported, among other things, that the payments and allowances made to Emery by the Emery Coal Company on account of the notes amounted to $14,792.68, with interest to be added (219, 221, Schedule B); and that, after applying to the debt due the complainants their proportion of the proceeds of the assets of that company, there remained due them $14,818.98 (220, 224, Schedule I). As this was less than the liability of Emery, including interest, as shown by schedule B (221), the auditor reported that the complainants were entitled to recover from him the whole sum of $14,818.98, with interest from the time the bill was filed (220).

No exceptions were filed to this report, and the court in special term made a final decree ratifying it, and awarding execution against Emery, and also against Sailer (242). Emery alone appealed to the court in general term. There the decree in special term, so far as it charged Emery, was reversed, and as to him the bill was dismissed. From the decre of dismissal the complainants appealed to this court (243).

## Assignments of Error.

No written opinion was delivered by the court in general term, so that a specific statement of its errors cannot well be made. But to comply with the rule of this court on this subject as nearly as possible, we aver that the court below erred—

1. In reversing the decree of the special term as to Samuel Emery, senior.

2. In dismissing the bill as to him.

3. In holding that the appellee was not responsible absolutely for all the coal furnished to the Emery Coal Company by the complainants.

4. In holding that he was not estopped, as to the complainants, to assert any claim against the Emery Coal Company on account of that company's notes in his favor, dated April 5, 1876, for $21,170.85.

5. In holding that he was not bound in equity to pay to the complainants, so far as required to make them whole, the amounts paid or allowed him by the Emery Coal Company on account of those notes as shown by schedule B (221,) to the auditor's report.

## Argument.

The complainants contend that Samuel Emery was responsible for the obligations in favor of the complainants incurred by his son and son-in-law (as well as by Sailer) from the fall of 1874 till their failure in July, 1877; and that if they are wrong in this contention he was certainly estopped as to the complainants to set up his claim of $21,170.85 growing out of the notes for that amount, dated April 5, 1876, and bound in equity to refund what he had collected on account of those notes. The court in special term having ascertained that the second of these propositions was right, and that a decree in pursuance thereof would make the complainants whole, did not decide the first.

### I.

*As to the liability absolutely of Samuel Emery for the amount due the complainants from the Emery Coal Company.*

1. It is of great importamce in this connection to understand precisely the relations of these parties prior to April, 1876, when the name of the Emery firm was changed to

"The Emery Coal Company." The averments of paragraph 2 of the bill and paragraph 2 of Emery's answer (12, 13) squarely raise an issue on this point.

The evidence on this subject demonstrates that the answer is untrue; that Emery, junior, and Burrough to all outward appearance, prior to April, 1876, carried on the business as partners under the firm name of Samuel Emery. The testimony of Barker (159, 195) and of Albright (148–9, 153) is completely confirmed by that of the indifferent witness Power, whose entire deposition should be read in this connection, (163 to 165.) It is further confirmed by the testimony of Burrough himself, who says:

"Just *before* we formed the Emery Coal Company, and afterwards, we were actually more intimately connected with Langdon, Albright & Company, than we were with Mr. Emery. *We* acted under them to supply the small trade of the city of Washington."

This testimony cannot be made to fit the theory that Emery, jr, and Burrough, prior to April, 1876, were mere clerks of Emery, senior.

Finally, the complainants are confirmed by the admitted fact that when the Emery Coal Company was formed Emery senior sought to get back the money he had invested in the business, and took notes for the amount he was short on that account, not as in payment of the purchase of the business, but in settlement of his claim, (207.)

The pertinence of this evidence is this: Emery senior told Barker in 1874 that he had started the business for "the boys," and that the complainants should let them have anything they wanted and he would see it was paid for. The advertisement which appeared in April, 1876, announcing the formation of the Emery Coal Company was entirely consistent with a continuance of this arrangement, (208;) and Barker testifies that he understood that it did continue, (195.)

2. As if carefully planning to lead the complainants to rely upon the agreement he had made with Barker, Emery senior prepared his advertisement so as to conceal the real nature of the transaction of April, 1876. In his answer (15) and his testimony (58) he says he gave notice that he had *sold* his interest in the business to the young men. In point of fact the advertisement reads not sold but "disposed of," (208.)

3. All three of the complainants testify in positive terms that they understood that Emery was responsible for coal supplied to the young men after as well as before April, 1879. (Barker, 195; Albright, 154, 156; Langdon, 196.) And the best possible evidence of the truth of their statements is the fact that in the six months following the announcement of the change of the name of the firm to the Emery Coal Company they sold it on credit coal to the value of over $70,000, (230, 231, 239, 240,) and on December 1st, 1876, had allowed it to become indebted to them in the sum of nearly $75,000, (6, 101, 102, 145, 147.)

4. Emery gave the Emery Coal Company the right to use his name in the new firm as he had in the old. It was called the *Emery* Coal Company with his consent. The reason that it was so called was that it would be understood by the public that the word Emery referred to him, (178, 174, 175, 187,) and this fact was communicated to the complainants. (192.) Samuel Emery, jr., was a very young man of no business standing, who boarded with his father and paid no attention to the business either before or after the change in the name of the concern, and whose connection with both firms was manifested mainly by overdrawing his account, (178, 173, 136, 137,) and no one would have taken the word Emery to refer to him. Moreover, the old sign, SAMUEL EMERY, was retained at the B street yard, the principal place of business, and the signs at the wharf and on the carts remained the same, (76, 77, 94, 97, 178, 179.) The Emery Coal Company never had

a sign anywhere, (98.) And on his attention being called to this precise point, Samuel Emery himself testifies: "I sold the . . . signs . . . to the Emery Coal Company, and they had authority to keep it [the sign 'Samuel Emery'] there or not as they pleased," (76.)

5. The order of March 9th, 1876, for 30,500 tons of coal is of first importance in this connection. At that date, there is no dispute Burrough's acts in buying coal bound Emery. Emery himself puts it: "I had authorized Mr. Burrough as my agent to make purchases," (168,) and he adds: "There was no coal ordered without consultation with me about it," (168.) This was said when Emery was examined in rebuttal, after the order of March 9, 1876, had been put in evidence, (152, 207.) It was at first proposed to retain the old name of "Samuel Emery," or to change it to "Samuel Emery & Co.," (187, 192.) Seven cargoes of coal were shipped to Samuel Emery & Co. by the complainants in April, 1876, and twelve to Samuel Emery, (239,) and all were entered to the debit of "Samuel Emery," making no change in the account, (235.) Afterwards all the coal shipped to "Samuel Emery" and "Samuel Emery & Co." in April, and charged to Samuel Emery, was transferred to the account of the Emery Coal Company, that name having been finally adopted, as shown by the publication of April 26, 1876, (see note at foot of account, p. 325.) The articles of copartnership were antedated April 1, (134;) but the order in question was given three weeks earlier than that.

That Samuel Emery was liable for the fifteen cargoes of coal shipped in April prior to the 25th of that month is a proposition not susceptible of controversy; yet it was thus all run into the account of the Emery Coal Company; and the complainants continued to deliver coal thereafter during the whole season of 1876 under this order of March 9, 1876, made, as Samuel Emery admits, with his knowledge and in his name. What proportion of the money due from

the Emery Coal Company to the complainants is for coal delivered under that order, cannot be ascertained; for, as the complainants supposed Samuel Emery was liable under the one name as well as under the other, they drew no line in their accounts between business done under that order and others, (230, 231.)

6. What occurred in June, 1877, instead of weakening this ~~their~~ argument, as seems to be supposed on the other side, strengthens it. And here dates are all-important. Most of the coal delivered that year was ordered April 6, (241,) the remainder April 11th, and prior to May 25, (228.) It was all shipped before June 20, (240.) It was all paid for in notes of the Emery Coal Company at from 60 days to 3 months before June 16, except $375, for which sum a check was given July 11, (Schedule A, 220.) On the 14th day of June the newspapers of Washington contained the notice that Sailer and Emery, junior, had withdrawn from the firm on the 16th of May, and that Burrough would continue the business alone and settle all debts, (2, 7, 14.) On the 20th of June, or later, Albright and Barker inquired of Emery whether he would be responsible for coal furnished Burrough, and were told that he would not, (190, 191, 184, 186.) About the same time they requested Burrough to ask for a written guarantee from Emery that he would be so responsible, and Burrough refused, (176, 208.) The complainants consequently stopped supplying coal, (195, 191.) At once Emery and his son and son-in-law began a scramble to get possession of all the assets, evidently bearing in mind the fact that the notes held by the complainants would begin to mature on the 16th of July. Nearly all the coal on hand was sold, in advance of delivery, to purchasers, so that of the 5,891 tons of coal delivered in May and June, (228, 241,) only 81 tons were left on the 18th of July, (see receivers' report, 214, 215.) The replevin suits referred to by them have since been decided in favor of the plaintiffs. Some time after July 9 Emery

got his son to cancel an account against him, Emery, on the books of the Emery Coal Company, amounting to over $10,000, (78 to 80, 201 to 204.) The papers evidencing this transaction are all undated but one, which is dated "7, 10, 77," that is, July 10, '77, (205.) Collections were meanwhile pressed closely, and where cash could not be obtained notes were taken, and these notes were turned over to Emery on the 14th and 16th days of July, (70, 71, 83, 84.) So thoroughly was the work done that all that was left for the receivers in the way of open accounts and notes realized only $581.30, (214.) The fact that these notes were not received by Emery till the 14th and 16th of July, he admits, (83, 84.) Some of them were lost by Burrough on Friday, July 13, and the loss was advertised on Saturday, the 14th, (83.) Yet Emery, referring to these notes, says, "I should have received them on the 10th of July had he (Burrough) not lost them," (71.) It would appear from this that the "settlement" dated July 10 was not made till after July 13. And all through June and July, down to that Saturday, Emery continued to haul coal from the wharf to his yard at 1st and B street, and to seize on such other of the firm assets as he could reach, (80.) The separation of the coal into piles for purchasers who had paid in advance of delivery was completed after the assignment to Ross & Dean was made, (37, 38, 39.) Some of the notes given for the coal so sold in advance of delivery found their way into the pockets of Samuel Emery, (38, 70, 83, 229.) None of them reached the assignees or the receivers, (214, 216.)

Comment is unnecessary.

## II.

*Samuel Emery is estopped in this controversy to set up his claim of* $21,170.85 *and interest, based upon the notes for that amount dated April* 5, 1876, *and bound in equity to pay to the*

*complainants so much of what he collected on account of those notes, with interest, as may be required to make good their debt.*

This is the proposition which, applied to this case by Mr. Justice MacArthur, resulted in the decree of the special term in favor of the complainants, (212.) If accepted by this court it will entitle the complainants to have the court below in general term instructed to affirm that decree, since no exceptions were filed to the report of the auditor based upon it. There in no question of amounts here.

The complainants maintain that this proposition is correct for reasons now to be given.

1. The averment of the bill is that "down to the 14th of of July, 1877, all the defendants had given the complainants to understand that the complainants were the ouly creditors to whom the firm of the Emery Coal Company was indebted in any considerable amount," (3.)

In his answer Emery denies this charge, and avers that the complainants knew at all times since the sale by him to the Emery Coal Company that it was indebted to him in "more than the sum of $10,000," (14.) He repeats this denial in other forms in his answer. But it is suggestive that nowhere in his answer does he aver that *he* ever told the complainants of the $21,170.85 indebtedness, or told them that he had *sold* his interest in the business at all.

2. All that has been said above on the question of Emery's absolute liability bears on the proposition now under consideration. Having informed the complainants that he had started the business for "the boys," and would pay for anything furnished them, he was bound if he wished to change that relation and assume that of a rival creditor, to give them distinct notice to that effect. If he proposed to do this by an advertisement which might or might not reach their eyes, he was bound to at least refer to a sale and not to use such an equivocal expression as "disposed of," which is

as applicable to a gift as to a sale, and to a sale for cash as a sale on credit. If he wished to escape from the imputation of bad faith in such an advertisement he should at least have refused the further use of his name in the firm name of the company to which he had disposed of his interest, and the use of his signs on its carts and at its wharf, and over the door of its principal place of business. When he allowed an order for 30,500 tons of coal—a whole season's supply—to be given in the name of Samuel Emery & Co. before any pretence of a transfer or sale of the business, it was certainly incumbent upon him, if he expected to be released from liability on that order and have the right to take that very coal in payment of alleged debts due him, to have an explicit understanding to that effect, and an understanding, too, upon good consideration. But he did none of these things.

3. On the contrary, everything was done to lead the complainants to suppose that the Emery Coal Co. began business free from debt. After the advertisement had been published and observed by Albright, Emery told him the young men had been doing a good business and making considerable money, and that the new company was strong, and then referred him to Burrough for further particulars, (150, 156,) and Burrough told him that he and Emery, junior, put in stock and fixtures, and that the whole capital put in amounted to something like $45,000, not a word being said about the notes held by Emery, senior, (150.) Burrough had previously told Albright that Emery, senior, was to put into the new firm $10,000, (152,) and this too at the time he was told the new concern would be called Samuel Emery & Company, (152.) He was given to understand all along that Emery, senior, had put his money into the new firm, (154, 156.) This was Mr. Albright's testimony. Burrough was called in rebuttal and asked whether he had ever given the complainants to understand that Emery, senior, was a member of the Emery Coal Company, but he

was not questioned as to what he had said to Albright about his father-in-law putting in a part of the capital or as to whether he had told the complainants of the indebtedness of the firm to Emery, senior, (175 to 182.) Hickok, who was in the employ of the complainant from July, 1876, to August, 1877, also testified on this subject. He said: "I have heard Mr. Burrough say several times in the office that the Emery Coal Company did not owe anybody but Langdon, Albright & Company; that they were the principal creditors, and that they didn't owe any amount to anybody else with the exception of a few hundred dollars, (146.) He repeated this statement substantially," (147.) On cross-examination he was asked: "Did you ever hear him (Burrough) say or represent to any of the members of the firm of Langdon, Albright & Company that he owed them alone, and did not owe Mr. Samuel Emery?" And he replied: "The remark that Mr. Burrough frequently made in my hearing was: "We do not owe anybody but Langdon, Albright & Co." And he adds that this was an unqualified statement, (148.) Burrough was afterwards called in rebuttal, but he did not contradict Hickok's testimony, (175 to 182.) Hickok does indeed say that at the conversation of Dec. 1, 1876, when the statement of that date (6, 7,) was submitted to Albright by Burrough, Burrough said that the sum of $10,000 which Emery had loaned the firm, and which was invested in this business, was included in the liabilities mentioned in that statement; but that he is in error in this is inferrible from his deposition as a whole, (145 to 148,) and is shown to be so by the testimony of Burrough himself, who admits that this sum of $10,000 was included in the balance that was shown by the statement in question to be in favor of capital account, (101, 102.) It is to be observed, too, that Emery admits in his answer that as to the $10,000 demand note which he held he agreed "not to insist on immediate payment," (13.) All this agrees thoroughly with Albright's

testimony that he was told before the firm-name was changed that Emery was to put in $10,000, and that he was given to understand all along that Emery's money was in the concern, (152, 154, 156.) On cross-examination Albright was asked if Burrough did not tell him during the conversation alluded to by Hickok that the firm owed Emery $10,000 "for the purchase-money," and he replied, "No, sir." (157.) And see Hickok's second deposition, (199.) A short time after this conversation of December 1, 1876, Albright saw Emery at the Citizens' Bank, and the latter said that they [the firm] had a pretty big pile of coal on hand, and that there seemed to be enough there to pay all they owed Langdon, Albright & Company; but he said nothing about any indebtedness to himself, (150, 151.) And by the testimony of Emery's own clerk and witness, Hodge, it is shown that as late as June 20, 1877, Emery told Albright and Barker that so far as he knew the firm was good, (183,) although at that time he held claims against them, mostly based on paper long overdue, to the amount of nearly $26,000, (204, 223.)

Against this array of evidence, tending to prove that from the time the Emery Coal Company was formed the complainants were given to understand that they were the principal creditors of the Emery Coal Company, and to prove that the facts about the purchase for $21,170.85 were studiously concealed from them, what testimony is adduced on the other side? Nothing but the naked statement of Emery himself, that in 1876, during a casual conversation with Langdon, one of the complainants, he informed Langdon how he sold out to the Emery Coal Company and what he took in payment for selling out, (167, 168.) This statement is contradicted by Mr. Langdon, (who says he paid scarcely any attention to the business of the complainants,) (197, 198.)

On the question of veracity it is worth while to note that Emery refers to this conversation in his answer, and he

then says merely that he informed Langdon that he had *transferred* all his interest in the coal business to the Emery Coal Company, (13.) Langdon says Emery told him "the boys were running the business," (197.) It is well also to remember, as bearing on Emery's veracity, that he at first denied, but under severe pressure afterwards admitted that when he received some of the notes given him as collateral by Burrough, in July, 1877, he had no knowledge of the failing condition of the Emery Coal Co., (72–3, 83–4.) He is also shown to have a defective memory when, in contradiction of Albright, he testified that his health was good in the spring of 1876, (168–9;) for Burrough afterwards inadvertently confirmed Albright's testimony on this point, (175–6.) And that he is capable of evading the payment of an honest debt is shown by the unwilling testimony of Sailer, (130, 131, 132, 10.)

4. In Emery's own statement of the transaction he says the capital of the Emery Coal Company when it began business was the $10,250 of which he made them a present, and that this was based upon an approximate estimate of the difference between these assets and the aggregate of the notes they gave him, (61.) This aggregate was $21,170.85, and the notes all matured within four months. When, therefore, he told Albright that the new firm was strong, (150,) he either deliberately misled him, or did not consider that the notes he held were to be considered liabilities as against the complainants. In either view the decree of the special term was right.

5. As an indication of the real value of the assets of the firm when Emery told Albright it was strong, take the fixture account. In arriving at the paper capital of $10,250, the appurtenances and fixtures were valued at about $7,000, (96.) When sold they realized less than $2,800, (32, 215.)

6. Sailer himself, when he became a member of the firm, seems to have had nearly the same impression about the $10,000 put into the business by Emery that was conveyed to Albright, as will be seen by reference to his re-

luctant testimony, when put on the stand by the complainants, (188, 189.) Of course, what was said to Sailer has no direct bearing here; but as it tends to show the understanding of the firm, it corroborates Albright as to what was said to him on the subject.

7. Lastly, on the books of the Emery Coal Company the cash paid to Emery, and the coal and wood delivered to him or to his order, were charged against him, and the account against him thus made was treated by all parties as an asset of the firm down to the 10th of July at least, and probably later, (82, 106.) This account amounted to $10,156.86, (205.) If the notes held by Emery were ordinary debts, why were they not surrendered, as from time to time they were paid? Burrough, indeed, affects to have been ignorant till July 15, 1877, that his book-keeper (who was his brother) included this account in his statements of assets; but that this should have gone on for a year without Burrough finding it out, is incredible.

In this connection is to be found further evidence, if that were needed, that the alleged settlement of July 10, 1877, between Emery and his son and son-in-law was a sham. The several statements of account against Emery, which together make up the charge of $10,156.86, are each signed "Received payment. The Emery Coal Company, S. E., jr.," S. E., jr., being the signature of "Samuel Emery, junior," (201 to 204.) Following this is a resume of the account against Emery, dated July 2, 1877, at the foot of which is written "7, 10, 77, closed by settlement this day to July 2, '77. The Emery Coal Company, by E. E. Burrough," (205.) Yet Burrough testified that on the third Sunday in July—July 15—he went to the office and examined the firm books in person, and then ascertained to his surprise, as he says, that the book-keeper, in a statement made that day, treated this account against Emery as an asset of the firm, (106.)

Hence it is certain that the so-called settlement of the preceding Tuesday, July 10, had not then been entered on the

books or brought to the notice of the book-keeper. But further, about noon on the Sunday that this occurred, Burrough went to Emery's house and told him of the book-keeper's error, and added, says Emery, "that the book-keeper ought to know and did know that I held notes to overbalance those accounts," (82;) so that it appears by the testimony of the appellee himself that neither he nor Burrough, on the 15th of July, knew that the account and the notes had both been cancelled on the 10th of July! But, stranger still, on the 16th of July Burrough wrote to the complainants that the assets of the failing firm amounted to $25,000, and in making this estimate he included the account against Samuel Emery, (110.)

In this note of July 16, Burrough, referring to the failing condition of the firm, says: "Mr. Emery, sr., was out of town all day yesterday, and am unable to announce anything, except, &c," (110,) thus recognizing the fact that he had no right to make the assignment he was contemplating without the consent of his father-in-law. On the following day, July 17, Albright met Emery senior, Emery junior, and Sailer, Burrough being in Baltimore. He testifies: "They said they did not know what to do; that they would let us know on Wednesday. * * * Mr. Emery senior said that he did not know what was best; that there were two ways to settle it up, and as quick as they could see Burrough they would let us know." The next day the assignment was made, and the bill in this case was filed. Down, therefore, to the very day this litigation began the appellee remained on the books of the Emery Coal Company a debtor in the sum of over $10,000, and dealt with the complainant as one who was responsible to them for money which that firm owed them.

It is respectfully submitted that the court below should be instructed to affirm the decree found upon page 241 of the record in this case.

A. S. WORTHINGTON,
*Of Counsel for Appellants.*

109 650

# Supreme Court of the U. S.

OCTOBER TERM, 1883.

JOHN JOSEPH ALBRIGHT, WILLIAM E. BARKER, AND ANDREW LANGDON, PARTNERS AS LANGDON, ALBRIGHT & CO., *Appellants*,

*vs.*

SAMUEL EMERY, SR., *Appellee*.

No. 159.

*Appeal from Supreme Court of the District of Columbia.*

BRIEF OF JOHN W. ROSS AND S. S. HENKLE, *for Appellee*.

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## ABSTRACT OF THE BILL.

The bill was filed in the court below against the present appellee, Samuel Emery, Sr., Samuel Emery, Jr., Charles C. Sailer, Edward E. Burrough, and John W. Ross and Mills Dean: the last two as assignees.

The material allegations of the bill, in substance, are: That the complainants were wholesale dealers in coal in the District of Columbia; that prior to March 1876, the

defendants, Emery, Sr., Emery, Jr., and Burrough were retail dealers in coal in the District. What the real relations of the defendants were complainants do not know. The business was carried on in the name of Emery, Sr., to whom complainants sold coal.

In April, 1876, the defendant Sailer became interested in said retail business, and the name of the firm was changed to "The Emery Coal Company." This new firm wanted to buy coal on credit of complainants, and to induce them to sell on credit the defendants represented that the original firm, Emery, Sr., Emery, Jr., and Burrough, had made a profit of $10,000 during the previous year, and that in addition Emery, Sr., had advanced $10,000 more in money or its equivalent, which was to form part of their capital stock.

That upon the faith of these statements, and in particular relying upon the assertion of Emery, Sr., that he owned a large part of the capital of the Emery Coal Company, the complainants began to deliver coal and continued to do so till the spring of 1877.

Burrough was the active partner, gave all the orders for coal, and signed all the checks or notes given in payment, the signature in all cases being "The Emery Coal Company, by E. E. Burrough."

That, in the latter part of 1876, the orders becoming large the complainants requested of Burrough a written statement of their assets and liabilities, which he delivered, showing assets $128,000 and liabilities $75,000. About the same time Albright inquired of Emery, Sr., as to the financial condition of the firm, and was informed by him that it was doing well and making money; and relying upon these representations, and in particular upon that of Emery, Sr., the complainants continued to fill the large orders of the defendants.

That between the 1st of May and the 20th of June, 1877, complainants had shipped defendants a large amount of coal, the contract price of which was $13,-763.54. For this coal and other indebtedness Burrough gave complainants notes amounting to $14,728.62. The notes were delivered between the 13th May and 23d June, 1877, and were all signed "The Emery Coal Company, by E. E. Burrough." The Emery Coal Company was also indebted to complainants on other accounts, making an aggregate indebtedness of $18,561.92.

That, on the 14th of June, 1877, and for several days thereafter, there was published in the Washington papers a notice of the dissolution of the Emery Coal Company on the 16th day of May, 1877, to which notice was appended the names of C. C. Sailer, E. E. Burrough and Samuel Emery, Jr. (See Exhibit "D.")

That the complainants had no notice of the dissolution until it was published in June, and then they had shipped nearly all the coal, and had made contracts for the shipment of the remainder. By whose authority it was published complainants do not know.

The bill then sets out that Emery, Sr., is the father of Emery, Jr., and the father-in-law of Burrough, and that Sailer is the father-in-law of Emery, Jr.

That while some of the defendants were doing business under the name of Samuel Emery, Sr., and afterwards, while some of them were doing business under the name of the Emery Coal Company, Emery, Sr., was the only one of them who had the means or credit to enable them to carry on the business.

When the Emery Coal Company was formed, and since Emery, Sr., had informed complainants that it owed no considerable sum to any one but complainants. Is is then charged that about 2,000 tons of the coal had,

within a few days, been hauled to the yard of Emery, Sr.

That down to the 14th day of July, 1877, all the defendants had given complainants to understand that they were the only considerable creditors the defendants had; that as late as June 16, 1877, Burrough had informed complainants that they owed nobody else.

That on the 14th of July, Burrough informed complainants that Emery, Sr., is a creditor for $8,000, or $9,000, or $10,000. That on July 17, 1877, Emery, Sr., made the same statement, and claimed that they owed him for the capital he had advanced, and that he is not a member of said firm.

That Burrough and Emery, Jr., are insolvent, and that they claim that they compose the Emery Coal Company.

That Emery, Sr., and Sailer claim not to be members.

That Emery, Sr., is a person of considerable pecuniary resources, and Sailer is believed to own a small amount of property in the District.

That Emery, Sr., claims to own the coal passed into his possession within a few days, and to be a creditor besides.

The bill then states the assignment by Burrough and Emery, Jr., to Ross & Dean, and the insignificance of the assets.

That the doings of the defendants, Emery, Sr., Emery, Jr., Sailer, and Burrough, are parts of a scheme in which they have all engaged to defraud complainants.

That by their representation as to the financial standing of the Emery Coal Company, and particularly by the representation of the connection therewith of Emery, Sr., the complainants were induced to furnish large quantities of coal. By setting up Emery, Sr., as

a creditor instead of a partner, and transferring to him 2,000 tons of coal, and placing it where it can only be reached by process from this court, defendants had fraudulently obtained from complainants merchandise worth $8,000.

That by their publications in June last of an antedated notice of dissolution they have purposely and fraudulently made obscure their relations as partners.

That the complainants can only ascertain through this court who are the partners, and that by these means they have deprived complainants of their remedy at law. By the pretended retirement of Emery, Sr., and Sailer, setting them up as creditors, they have wrongfully sought to deprive the complainants of any remedy against these members of the firm who have any property, and finally to hinder and defraud complainants, they have made the assignment to Ross & Dean, while the principal part of the coal has been transferred to the custody of Emery, Sr.

Prayer for receiver and injunction. That when it is ascertained who compose the Emery Coal Company an account may be taken of what is due complainants, and the receiver or defendants, Emery, Sr., Emery, Jr., Sailer, and Burrough, be required to pay, &c.

There is no prayer for discovery.

The defendants all severally answered the bill under oath except Ross & Dean, who filed a joint answer.

The answer of the defendant Emery, Sr., denies that the bill has made a case for equity relief, and claims the same advantage as though he had demurred.

Testimony was taken on both sides, and upon hearing in the special term the decree fixing the liability of the several defendants, found on pp. 212-13, rec., was ren-

dered by the court, and after the coming in of the auditor's report the final decree found on pp. 241–2, rec., was rendered. From which decree the defendant Samuel Emery, Sr., appealed to the court in general term.

Upon the hearing in the general term the decree as to Samuel Emery, Sr., was reversed and the bill dismissed, and the complainants below appealed to this court.

Samuel Emery, Sr., being the only defendant appealing from the original decree, we need only consider the case so far as it affects him.

Passing for the present the objections to the bill itself and the obvious failure to make a case for equity cognizance against the defendant Emery, Sr., let us see how far the allegations of the bill touching Emery, Sr., are sustained by the answers and the testimony.

The first allegation in the bill on which plaintiffs rely, touching a supposed liability of appellant, is the following in paragraph 2 of the bill (p. 1:)

> In and prior to March, 1876, the defendants, Samuel Emery, Senior, Samuel Emery, Junior, and Edward E. Burrough were engaged in business in said District as retail dealers in coal. Their business was then transacted in the name of Samuel Emery, Senior, but said Samuel Emery, Junior, and said Burrough attended to the business.

To this allegation the answer of Emery, Sr., (pp. 12, 13, par. 2,) replies:

> I deny the allegation in the second paragraph of said bill that prior to March, 1876, the defendant, Samuel Emery, Sr., Samuel Emery, Jr., and Edward E. Burrough were engaged in business in said District as retail dealers in coal. Prior to the date named I was solely

interested in said business, and carried it on in my individual name, and transacted business with the plaintiffs under the name of Samuel Emery to an amount of $70,000 or $80,000. The other defendants named in said paragraph were only clerks, and the fact that they had no other connection with my business was well known to the plaintiffs. I admit that complainants sold coal to me when I owned said business, and state that all of said coal was fully paid for.

Burrough's answer (p. 17:)

2. In answer to the second paragraph in the complainant's bill I say that prior to April 1, 1876, Samuel Emery, Sr., was engaged in the wood and coal business in his own name, having no partner or partners, and this defendant and Samuel Emery, Jr., were employed by said Samuel Emery, Sr., as clerks and salesmen, and I aver that the complainants were fully aware that said Samuel Emery, Sr., had no partners.

Answer of S. Emery, Jr., (p. 20:)

2. In answer to the second paragraph of complainants' bill I say that I was not in March, 1876, nor prior to that time nor since that time engaged in the coal business with the defendant, Samuel Emery, Sr.; that I am not, nor have I ever been, a partner of the said Samuel Emery, Sr., in the coal business or any other business; that prior to April, 1876, the said defendant, Samuel Emery, Sr., was engaged in the coal business in his own name, and without any partner or partners whatever, and this defendant and the defendant, E. E. Burrough, were employed by him as clerks and salesmen.

There is no testimony in the record tending to show that any information or facts ever were communicated to plaintiffs which could have induced them to believe that Burrough or Emery, Jr., were partners in the busi-

ness conducted under the name of Samuel Emery. The testimony adduced by the plaintiffs themselves is as follows:

Emery, Sr., testifies (p. 57:)

5 Q. In what name was the business conducted, and who was associated with you at the beginning?

A. The business was conducted in my name, and no one was associated with me except my wife; I carried on the business myself.

6 Q. Who were your employees?

A. I had Mr. Burrough, my son, Mr. Wm. E. Hodge, Edward E. French, and others.

7 Q. Were your son and Mr Burrough in your employ at the time you commenced said business; and if so, how long did they continue in your employ, and for what compensation?

A. Burrough was taken into my employ when I began the wood and coal business, and Samuel Emery, Jr., was in my employ before, and had been for some years when I was in the stone business. They continued in my employ until the 1st day of April, 1876.

Burrough testifies (pp. 92, 93:)

19 Q. After you came to Washington you went immediately into the employ of Samuel Emery?

A. Yes, sir.

20 Q. In what capacity?

A. As clerk.

21 Q. What business did he at that time carry on?

A. He was commencing the coal business, and he carried on the stone business.

* * * * * *

25 Q. Upon what terms did you originally enter his employ?

A. Under an agreement to receive a salary of a thousand dollars a year.

26 Q. Was that agreement in writing?

A. No, sir.

27 Q. What were your duties, and what service did you perform?

A. I had general charge of the business.

27 Q. What charge or direction or control had Mr. Emery himself?

A. He had supervision over me; I acted under him as his foreman.

29 Q. Did you not have practically the whole charge of the coal business in all its details?

A. No, sir.

30 Q. What direction did he give?

A. He controlled the amount of purchases and sales, and the terms upon which the coal was sold, and the collections.

And Emery, Jr., testifies (p. 136:)

By Mr. WILSON:

1 Q. What was your occupation prior to 1st of April, 1876?

A. Clerk.

2 Q. With whom?

A. Samuel Emery.

3 Q. At what compensation?

A. At the rate of twelve hundred dollars a year.

The next allegation in the bill, which can have any bearing upon Samuel Emery, Sr.'s, liabilities in this suit, is the following, to wit:

In paragraph 3 (p. 1:) "The Emery Coal Company wished to purchase coal from the complainants on credit. The complainants, to induce them to do this, were informed by all the defendants that the original firm—Emery, Sr., Emery, Jr., and Burrough—had made a profit of $10,000 during the previous year, which sum constituted a part of the capital of the new firm, and in addition thereto said Emery, Sr., had advanced money or its equivalent to the sum of $10,000 more, which was to form part of their capital stock. Upon the faith of these statements, and in particular relying upon the

said assertions of Emery, Sr., that he owned a large part of the capital of the said Emery Coal Company, the complainants began to deliver coal."

The above allegation is flatly denied by the answer of Emery, Sr., (p. 13,) coupled with a statement that he had personally informed Langdon, plaintiff, soon after his sale, that he had nothing whatever to do with the company. It is also denied in like terms by the answer of Burrough (p. 17,) by the answer of Emery, Jr., (p. 20,) and by the answer of Sailer (p. 22.)

The answer of Emery, Sr., to the above is as follows (p. 13):

I deny that I ever informed the complainants that the original firm ever consisted of myself, said Emery, Jr., and Burrough, and that said firm so composed had made profits as alleged in said bill. I stated to the complainants that the business of which I was sole owner had made a profit of $10,000 according to the statement of my employees, who took an account of profits and of stock on hand. This amount so realized in profits by me I turned over to said Burrough and Samuel Emery, Jr., in payment for the services of said Burrough and Samuel Emery, Jr. The Emery Coal Company passed to me its notes for the purchase money of said business. I deny that complainants were ever informed by me that I had advanced in money or its equivalent the sum of $10,000 more, which was to form part of the capital stock. Of the notes given me by the Emery Coal Company for said purchase money, there was one note payable on demand for the sum of $10,000, on which I agreed with said company not to insist on immediate payment. But the said sum of $10,000 was not advanced by me as part of the capital stock of said company. Said note was taken as a valid obligation of said Company in good faith as part of said purchase money.

I deny that complainants began to deliver coal to the Emery Coal Company relying upon any assertion of mine that I owned a large part of the capital of said Emery Coal Company. I never made any assertion to the com-

plainants, or to any of them, that I ever owned any of the capital of the Emery Coal Company. On the contrary, I informed A. Langdon, one of the complainants, within a few months after said sale, that I had transferred all my interest in the coal business to the Emery Coal Company, and that I had nothing whatever to do with said company.

The answer of the defendant, Burrough, to the same allegation is as follows (p. 17):

3. In answer to third paragraph, I say that on April 1st, 1876, this defendant, C. C. Sailer, and Samuel Emery, Jr., formed a co-partnership under the name and style of The Emery Coal Company. A notice of the formation of said firm, with the names of the copartners appended thereto, was published in the *National Republican* on the 26th day of April, 1876, and on other dates; and I aver that prior to the formation of said firm the complainants were informed that it was about to be formed and the names of the partners, to wit: this defendant, C. C. Sailer and Samuel Emery, Jr., were communicated to them. That said firm purchased the business theretofore carried on by Samuel Emery, Sr., which fact was also duly published in the *National Republican* and personally communicated to the complainants by this defendant. I deny that I ever represented to the complainants that Samuel Emery, Sr., contributed any capital to the said The Emery Coal Company, but I informed the complainants that said Samuel Emery, Sr., was a creditor of said firm to the amount of $10,000 on account of purchase money. I deny that the complainants were ever induced to credit The Emery Coal Company by representations that Samuel Emery, Sr., was a member of said firm, or in any manner interested in said firm. On the contrary, the complainants have several times requested this defendant to procure the endorsement of said Samuel Emery, Sr., on the notes of The Emery Coal Company.

The answer of Emery, Jr., (p. 20) is as follows:

3. In answer to the third paragraph of complainants'

bill, I say that I never, at any time, represented to the complainants that Samuel Emery, Sr., was a member of the firm The Emery Coal Company, or that he had contributed to the capital of said firm, or that he was, in any way, interested in said firm.

And defendant, Sailer, says (p. 33):

That this defendant never represented to the complainants that Samuel Emery, Sr., owned a large part of the capital of The Emery Coal Company.

The court will search in vain for any testimony tending to show that Samuel Emery, Sr., ever made any statement to any of the plaintiffs that he had advanced $10,000 to the capital stock of The Emery Coal Company. The three plaintiffs having solemnly sworn to the bill making that allegation, it might reasonably be expected that somewhere in their testimony would appear some expression used by Emery, Sr., to one of the plaintiffs which might in some way tend to support the above averments. *But there was not even an attempt to sustain the allegation by proof.*

The plaintiff Albright, (Record, p. 156,) on cross-examination was asked—

67 x-Q. "You believed that he (Sam'l Emery, Sr.,) was still a member of the Emery Coal Co.?"

A. "I believed he was to a certain extent; yes."

68 x-Q. "What do you mean by 'to a certain extent?'"

A. "I know that to the public generally he was not a member, but it was represented to us that he had put money into the firm, to stay there to help the firm. Whether that made him a partner legally or not I cannot say. I thought it did."

76 x-Q. "Upon what was your belief founded?"

A. "That he had money in the firm."

81 x-Q. "As a creditor or as one of the firm?"

A. "*I understood that his money was put in.* I do not know whether that would make him one of the firm or not."

Instead of testimony to the effect that Emery, Sr., or any one authorized by him to speak, had told any plaintiff that he owned part of the capital stock, we find it had been "represented" that his money was with the firm. When asked if it was there as a creditor he evaded the question, and the fair inference is that he knew that it was as a creditor.

Wm. T. Hickok, a witness for plaintiffs, and their book-keeper, testifies (p. 146) that on December 1, 1876, (a few months after the formation of the Emery Coal Company) in an interview between Albright, one of the plaintiffs, and Burrough, of the Emery Coal Company, the following statement was made:

"And Mr. Burrough said, I am very positive at that time that Mr. Emery had loaned them $10,000, which was already invested in their business, or that they owed him $10,000; I do not remember the exact words."

On p. 146 the above is reiterated. "But Mr. Burrough remarked that they had borrowed from Mr. Emery $10,000, or, at all events, that they owed him $10,000." On cross-examination p. 148, the 28 x-Question was as follows:

"But he (Burrough) stated at the time he presented that he did owe him (Emery, Sr.,) $10,000?"
A. "Some time during the conversation, yes."

At the close of the witness' testimony, when he corrected and signed it, the following note was made, (p. 148:)

"It is my impression that the $10,000 was included in the statement of liabilities."

The above testimony was taken Nov. 20, 1877, less than a year after the conversation was had of which he testified. After about another year had elapsed (p. 199) the same witness is called as to the same transaction, and, under objection by defendant's solicitor, attempts to explain away his former testimony, but admits in answer x-Q. No. 13, "The items in that statement of their affairs I do not remember as well now as when that testimony was given," (p. 200.)

Here, then, we find the allegation that Emery, Sr., had represented that he owned any part of the capital stock of the Emery Coal Company not only denied by the answer, and wholly unsupported by proof, but that the plaintiffs' own witness testified that Langdon, Albright & Co. were notified as early as December, 1876, that Emery, Sr., was a creditor of the Emery Coal Company.

But suppose Burrough had represented that Emery, Sr., had advanced money to that company as part of its capital stock, that could not have bound Mr. Emery, unless made with his knowledge and sanction. (Parsons on partnership, p. 72.) It is folly to suppose that Mr. Emery, meeting plaintiffs frequently, would refer them to Burrough for a statement as to his relations with that firm. His frequent references to Burrough were as to the affairs of the Emery Coal Company, and the details of his business, of which he knew little; not as to his own connection or want of connection with the firm.

So far from having been overcome by the proof are the answers on this point that we find them corroborated by testimony adduced by the plaintiffs in chief. Burrough, a witness for plaintiff, testifies, (p. 98:)

85 Q. From the first of April, 1876, what was the interest of Samuel Emery, Sr., in the firm?

A. He had no interest.

86 Q. What pecuniary interest had he in it?

A. I don't understand your term pecuniary interest; do you mean how much money was due to him?

87 Q. I will say "interest;" what pecuniary interest had he in it?

A. I don't know that he had any interest in it. I don't understand your term pecuniary at all; if you mean how much money we owed him I think I can give you about the amount.

88 Q. How much money had he in the firm, and how much money did the firm then owe him?

(Question objected to by Mr. Dean as tending to confuse and mislead the witness.)

A. He had no money in the firm; we owed him about $21,000 when we started.

88 Q. How was that indebtedness created, and of what did it consist?

A. We gave him notes to that amount for his interest in the business which expired at that time.

90 Q. What notes were given?

A. One on demand for $10,000. I think two of $4,000, and one of 3,100 and some dollars; I don't remember exactly now the amount, but that is about it.

Again, on p. 102, Burrough says:

"Mr. Albright was perfectly aware all the time that we owed Mr. Emery the money.

Q. "How do you know that?

A. "I told him so before we started business, when we borrowed money from Mr. Emery to conduct the business with. That statement was made in February, 1875, before we went into business at all. The same statement was made to every man that I called upon in Philadelphia, and Mr. Albright was over there with me, the Maryland Coal Company of New York, and others," and Mr. Albright has no where denied this statement.

Having utterly failed upon the issue made by the

third paragraph of the bill to show that Emery, Sr., or any one authorized by him to state his business relations, had informed the plaintiffs "that Emery, Sr., had advanced in money $10,000, which was to form part of the capital stock," and it not only having not been proven, but having been disproven that plaintiffs relied upon "said assertions of Samuel Emery, Sr., that he owned a large part of the capital of the said Emery Coal Co.," we find the plaintiffs' counsel abandoning that issue and seeking to raise another, not made or referred to in the pleadings, to wit: Although Samuel Emery, Sr., retired from the wood and coal business in April, 1876, as plaintiffs had, in the month of February before, been notified he would do, (p. 176); although he actually sold and delivered his stock, fixtures, and book accounts to the Emery Coal Company, with published notice to the world and personal notice to two of the plaintiffs of the persons who would compose the Emery Coal Company, and of Samuel Emery, Sr.'s retirement; although for fifteen months thereafter no business dealing was had between plaintiff and appellant, except that plaintiff sought his indorsement of Emery Coal Co. paper, and tried to procure his written guaranty of its debts, yet he should be held liable for the debts of the Emery Coal Co., (all of which were for coal sold after May 1, 1877, except the sum of $3,500.) (Bill, p. 2:)

1. Because in March, 1876, Burrough ordered coal and signed the order E. E. Burrough, manager for S. Emery & Co.

*All the coal sold under that order was delivered in April*, 1876, (Albright's testimony, p. 152.) All coal delivered under that order was paid for. It does not appear Emery, Sr., ever knew of that order. Plaintiff Albright testifies, p. 158:

94 x-Q. Did Samuel Emery, Senior, to your knowledge, ever see that paper signed "E. E. Burrough, manager for S. Emery & Co.?" (Exhibit L., A. & Co., No. 36.)

A. I do not know that he ever did.

95 x-Q. Did you ever tell him that you had such a paper?

A. I do not know whether I did or not.

96 x-Q. It is likely you would know it if you told him, is it not?

A. I do not know that it is at all.

Neither plaintiff has testified that he based his belief that Emery, Sr., was liable for the Emery Coal Co.'s debts on that order. Without proof that plaintiffs were induced to believe from that order—in spite of Mr. Emery's repeated statements and published advertisements to the contrary—that he was actually a partner, the fact had no bearing on the case.

So, too, with regard to the name of "S. Emery" on certain carts used by the Emery Coal Company, and on a sign left on a building. Against actual retirement from the business, such trifles could have no weight, except as to persons who prove that they were misled thereby. There is no testimony tending to show that any plaintiff ever knew the last named facts, until after the suit was commenced.

The only reason plaintiff, Barker, gave for believing Mr Emery liable (p. 159) was that he told him when he first sold him coal, that he would be responsible for the coal which Burrough, his clerk, might order. And he first sold him coal in 1874.

Albright's reason was that he understood his money was put in (p. 156,) but that he would not reply when asked if he had not heard that his only interest was that of a creditor.

The pains taken by Emery, Sr., to notify plaintiffs and the public than he was not connnected with the Emery Coal Company more than fulfilled the spirit of the law. Had there been only a change of name and style, that would have been enough to have placed plaintiffs on inquiry. Young vs. Tibbetts, 32 Wisconsin, 79. But here there was public notice of withdrawal from business—a sale and full knowledge of who the new dealers were.

The following is the notice published in three papers and read by the plaintiffs, (Record, pp. 16, 208:)

*National Republican*, Washington, D. C., Dec. 11th, 1877.

WASHINGTON, D. C., APRIL 1, 1876.—I have this day disposed of all my interest in the wood and coal business at First and B streets northwest, and at the wharf near the foot of Sixth street, southwest, to C. C. Sailer, Edward E. Burrough and Samuel Emery, Jr., who will hereafter conduct the business under the name of "Emery Coal Company." Thankful for past patronage, I respectfully ask a continuance of the same for my successors in the business. All persons having claims in connection with the above business will present them for payment, and all indebted will please make payment to "The Emery Coal Company."

SAMUEL EMERY.

WASHINGTON, D. C., APRIL 1, 1876.—We, the undersigned, have this day associated ourselves together under the name and style of "The Emery Coal Company" for the purpose of continuing the wood and coal business heretofore carried on by Samuel Emery. We respectfully solicit a continuance of the patronage of our friends and public generally.

C. C. SAILER,
EDWARD E. BURROUGH,
SAMUEL EMERY, JR.

I hereby certify that the advertisement herewith attached appeared in the issue of the *National Republican* of April 26 and 27, 1876.

Respectfully,

J. WHIT HERRON,
*Book-keeper National Republican.*

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THE EVENING STAR,
*Washington, Dec.* 11, 1877.

I hereby certify that an advertisement exactly similar to the one above was inserted in the *Evening Star* of April 26th and 27th, 1876.

S. H. KAUFFMAN,
*President Evening Star Newspaper Co.*

In accordance with this notice the account for all coal sold by appellants, subsequent to December, 1876, was charged to the Emery Coal Company, on the books of Langdon, Albright & Co. (Record p. 230.)

The following is the testimony of plaintiff, Albright, with regard to the advertisement (p. 154):

43 x-Q. In April, 1876, did you have your attention called to, or did you see or hear of, the advertisement in the paper which has been referred to in the testimony of the defendants?

A. I know of the advertisement; I can't remember exactly, now, whether I saw it or not.

44 x-Q. You knew that there was an advertisement in the paper to the effect that Samuel Emery had sold out the business to the Emery Coal Company?

A. Yes; I admit that.

45 x-Q. And the Emery Coal Company was composed of E. E. Burrough, Samuel Emery, Jr., and C. C. Sailer?

A. Yes.

46 x-Q. You knew that fact?

A. I knew that.

47 x-Q. You knew that Samuel Emery, Sr., was not a member of the Emery Coal Company?

A. I did not; to a certain extent I did not know, because I had been informed all along that he had put his money in. I knew that to the general public he did not appear as a member of the firm, but I always supposed that his money was in there.

48 x-Q. Notwithstanding that advertisement?

A. Yes, sir.

Plaintiff, Langdon's, testimony (p. 198):

17 x-Q. Did you see the advertisement that appeared about April, 1876, announcing the formation of the Emery Coal Company, which advertisement was signed by the partners?

A. I think I saw such an advertisement, but I could not say anything about the date, or anything about it?

18 x-Q. Did you see an advertisement where Samuel Emery announced that he had sold out his business to the Emery Coal Company?

A. I cannot distinctly recollect of anything particular about the advertisement.

Besides the published notice, the plaintiff, Langdon, was fully advised of all the facts, as is shown by the testimony of Mr. Emery (p. 167):

A. The first conversation was with Mr. Langdon, the head of this firm. I was engaged on New York avenue, and he passed by and saw me, stopped and told me he had, I think, a bill of lading that had come from New York, that was endorsed wrong and sent back from New York to the Emery Coal Company, for a different endorsment—to be paid there. He said that if I could endorse that, it would save him the trouble of going to the wharf to see the parties there. I told him I had no further interest in the coal business; that I had sold out all my business to these parties under the firm name of The Emery Coal Company.

Q. And that you could not endorse it?

A. Yes, that was the first conversation.

Q. When was that?

A. That was, I think, in the month of April, soon after I had sold out to them.

Q. In 1876?

A. Yes; I was doing some work for Dr. Sowers, on New York avenue, at the time, and he came along there and asked me that question.

Q. Did you have any subsequent conversation with him in regard to that?

A. In the course of the next two months I met Mr. Langdon in the Citizen's Bank on 15th street. He asked me if I would do a favor for him; I told him I would if I could; he said he would like me to use my influence with the Emery Coal Company to induce them to change their bank account from the Metropolitan Bank to the Citizen's Bank, as he was a director of the Citizen's Bank, and could more readily get their notes discounted there, if they would keep their account there. I told him that I would use my influence; that I would see Mr. Burrough, who attended to the financial affairs of the firm, I believed, and tell him what he said. Then he asked some questions with regard to my selling out to them and I gave him a full statement of how the transaction was made—how I sold out—what I took in payment for selling out, and everything in connection with the transaction between the Emery Coal Company and myself, there at the counter of the Bank on 15th street. I afterwards mentioned this conversation to Mr. Burrough, and told him what Mr. Langdon wanted, and he told me the reasons why he could not change; that he had large dealings with J. W. Thompson, and he wanted, at Thompson's request, to keep his account there, and he said he would see Mr. Langdon in connection with it, and I suppose he did.

Q. Did, or did you not, in both of these conversations, state distinctly to Mr. Langdon, that you had no interest in the firm called the Emery Coal Company?

MR. WORTHINGTON. Objected to as leading.

A. I did state distinctly, and told him how I received my pay—in notes, as I have testified—I can't give the dates now; but I have testified before, I think, that

there were three or four notes that I took in payment for the amount I sold out for.

Q. Did you have any conversation with other members of the firm in regard to the selling out?

A. I do not recollect any particular conversation, but I have met Mr. Albright frequently, and he was fully aware that I had sold out—that I had no further interest in it—by different conversations, but I cannot call any one particular one to mind.

There is no denial, in plaintiffs' testimony in rebuttal, of this information stated to have been conveyed to Albright. Mr. Langdon remembers the meetings and conversations, but cannot remember all the facts. He amits that his memory is poor. (p. 198.)

In the face of such notice, both by the public prints and by verbal statements, were plaintiffs misled by any belief that Emery, Sr., was still a secret partner?

Although the plaintiffs resided in the same city with appellant and are shown by the record to have met him frequently, it does not appear that they ever, after the conversation with Langdon, above stated, asked Mr. Emery if he retained any interest in the firm, nor did they ever treat or consult with him as though he were a partner.

The record discloses an ingenious attempt to make it appear that Emery, Sr., referred the question of his connection with the Emery Coal Company to Burrough, and that Burrough's statement led the plaintiffs to infer that he (Emery) was interested in it. For instance when Albright says (p. 153): "He, Emery, Sr., referred me to Burrough for information about the firm." The answer is followed by the interrogatory:

"What did Burrough say as to the manner in which

the contribution of Samuel Emery, Sr., to the firm was to be made?"

A. "I can't say that I asked that question or that he told me."

At an indefinite time in the spring of 1876, plaintiff Albright testifies to an intimation from Burrough that there would be a change in the firm, and vague talk of the firm of Samuel Emery & Co.,—a firm which never came into existence. In April the Emery Coal Co., was formed, and specific notice given to the plaintiffs that Samuel Emery, Sr., was not a member of it.

Were plaintiffs induced by that statement made before April to believe that from and after April, 1876, Emery, Sr., was a member of the coal company? No one of them has testified that his belief in Emery, Sr.'s liability was founded on that. They had no right to infer it. Emery, Sr., was competent to state his own business connections, and it is folly to suppose that he would refer that question to Burrough, or to any one. In April he told Langdon all about his sale and absolute retirement, and about his want of connection with the Emery Coal Co. There was no need of a reference to Burrough for "information about the firm." Burrough testifies (p. 175, 176):

Q. About what time was it that the Emery Coal Company was formed?

A. The Emery Coal Company was formed on the 1st of April, 1876; that is, it took possession of the property at that time.

Q. Did you commence business at that time?

A. Yes, sir.

Q. About that time did you have any conversation with the plaintiffs, Langdon, Albright & Co., or any of them, in regard to the Emery Coal Company?

A. The first conversation in reference to our purchase of Mr. Emery's interest and a change in the business

took place in the fall before that. Mr. Emery was in rather bad health, and his family physician advised him to give up all active participation in business. That was the first conversation that was had; at that time I spoke to Mr. Albright about it, and I think in the month of February I informed Mr. Albright that Mr. Sailer would come into the business either February or March; I am not sure which; I think it was in February, and that we should buy Mr. Emery out on the 1st of April.

Q. What did you state to Mr. Albright or any other member of that firm in reference to Samuel Emery's being a partner?

A. Nothing; I never made any statement of the kind to them; on the contrary, Mr. Albright frequently asked during the existence of the Emery Coal Company for Mr. Emery's endorsement on our paper to help them get a discount at a low rate of interest.

Q. Did you ever say or do anything during the existence of the Emery Coal Company to lead Mr. Albright or any other member of that firm to believe that Samuel Emery was a partner in the coal company?

Mr. WORTHINGTON: Objected to as leading.

A. I did not.

Q. How long did Mr. Sailer remain a member of the firm?

A. Thirteen months and a half

Q. After Mr. Sailer went out of the firm did you still continue business under the name of the Emery Coal Company?

A. I did.

Q. And bought coal from the plaintiffs?

A. I did.

Q. [Submitting a paper to witness.] What is that?

A. [After examining same.] This is a paper that was given to me by Langdon, Albright & Co., I think, in the last part of June, 1877—I am not sure whether it was May or June—which they wanted me to sign.

Q. Did they want anybody else to sign?

A. Yes; they wanted to get Mr. Emery to sign as a guarantor.

Q. What Mr. Emery?

A. Mr. Samuel Emery, Sr.

Q. Which one of the company gave it to you?

A. I do not recollect which one.

(Defendants' counsel here offers said paper in evidence, which is filed herewith, marked "Exhibit B.")

Q. Did you apply to Mr. Emery?

A. No, sir; I refused to make any such arrangement and stated that I could get all the money that I wanted on Mr. Emery's endorsement without them; I always made that statement to them when they made application for his endorsement as guarantor.

Q. Did they ever ask you to get Mr. Emery to endorse the paper of the Emery Coal Company?

A. Several times.

Q. Did you sometimes get it for them?

A. Never, and for the reason that I stated—that we could always get Mr. Emery's paper discounted without their name on it.

(See Exhibit B, p. 208.)

Burrough's testimony (p. 177):

Q. You saw Langdon, Albright & Co. very frequently during your connection with the Emery Coal Company, did you not?

A. Yes.

Q. Did they or any one else of that firm ever say anything to you by which you could understand that they claimed Samuel Emery, Sr., to be a member of that firm?

Mr. WORTHINGTON; Objected to as leading.

A. No.

Q Did not Langdon, Albright & Co. and the individual members of that firm know exactly who composed the firm?

Mr. WORTHINGTON: Objected to as leading and incompetent.

A. They did; all of them.

Q. Did you have conversations about the matter?

A. Just before we formed the firm of The Emery Coal Company, and afterwards, we were actually more intimately connected with Langdon, Albright & Com-

pany, in every sense of the word, than we were with Mr. Emery. We acted under them to supply the small trade of the city of Washington—small merchants—and received a commission from them; and they were as familiar with the business as we were.

Q. When did you know that they claimed Samuel Emery to be a partner?

A. I never knew it until after this suit was commenced.

Emery, Sr., testifies (p. 172:)

Q. During the existence of the Emery Coal Company was it ever brought to your knowledge that anybody claimed that you were a member of that firm?

A. Never, to my knowledge; I never had any idea that anybody thought so until this suit was instituted or commenced; I gave all the public notice that I supposed was required; I don't know now that I know what a legal notice is; but I gave notice as far as I could through the papers, and told everybody that spoke to me about it, I didn't make it a business to go around and tell them.

The next allegation of the bill touching Samuel Emery, Sr., (p. 2,) referring to December, 1876, is as follows:

About the same time the complainant, Albright, saw the defendant, Samuel Emery, Sr., and inquired of him as to the financial condition of said firm, and was informed by him that it was doing well and making money; upon the faith of these representations, and relying in particular upon said representations of said Samuel Emery, Sr., and his connection with said firm, the complainants continued to fill the large order for coal which they received from said firm.

Answer of Samuel Emery, Sr., paragraph 4, (pp. 13, 14:)

4. I know nothing of the matters alleged in the fourth paragraph of said bill, except that wherein it is alleged that complainant, Albright, saw me and inquired as to the financial matters of said firm; I have no recollection whatever of any such conversation; I utterly deny that complainants continued to fill large orders for coal which they received from said firm, relying upon any representations made by me with reference to said firm, or relying upon my connection with said firm; said complainants well knew long prior to said December, 1876, that I had no connection with said firm.

There is nothing in the testimony which supports the above averment of the bill. It there were, it is submitted that this is not an action on the case for false representation. Neither does it anywhere appear that Emery, Sr., was then, or for months afterward, cognizant of any weakness in the financial affairs of the Emery Coal Company. Six months thereafter he loaned the company his notes for large amounts. But it does appear in the testimony (p. 150) that in December, 1876, plaintiff Albright called upon Burrough for an itemized statement of the financial condition of the Emery Coal Company, and that it was furnished.

It is next alleged in the bill, (p.. 3, par. 8:)

When the Emery Coal Company was formed, and afterwards, the defendant, Samuel Emery, Sr., informed the complainants that it owed no considerable sum of money to any one except these complainants.

Answer of Samuel Emery, Sr., (p. 14:)

9. I deny that I, as one of the defendants, ever gave the complainants to understand that complainants were the only creditors to whom the firm of the Emery Coal Company was indebted; I believe that the complainants

knew at all times since the sale by me to the Emery Coal Company that said firm was indebted to me in more than the sum of $10,000; I know nothing as to the alleged statements made to the complainants by the defendant, Burrough; I admit that I informed the complainants, at the date alleged, that I was a creditor of said company, but I deny that that was the first intimation had from any source that I claimed to be a creditor of said company. (Par. 10, p. 8.) I deny that complainants were induced to deliver coal to said company upon any statements of mine that I was not a creditor of said company.

And on p. 15, par. 12:

Complainants have never received from me any representations whatever which could have induced them to sell coal to the Emery Coal Company on credit. Complainants have never had any statement from me that could in any way induce them to believe that I was connected with said company. On the contrary, I took the most public means of advertising the fact that I had sold all my interest in said business to the said Emery Coal Company. Within two or three months after said sale and advertisement, Langdon, one of the complainants, met me and asked me to induce the Emery Coal Company to transact their business with the Citizens' National Bank, in which said Langdon was director, as I am informed. I then informed said Langdon that I had nothing whatever to do with said Emery Coal Company, and that I could only mention his request to the members of the Emery Coal Company, which I did. I have always claimed to be a creditor of said Emery Coal Company. I have never claimed to be a member of the said company.

There is not in the record any proof that Samuel Emery, Sr., ever informed complainants that the Emery Coal Company owed no considerable sum of money to any one except the complainants. There is no evidence that any question of the kind was ever asked Mr.

Emery. But the record shows (p. 167) that soon after April 1, 1876, Mr. Emery gave Langdon, a plaintiff, full details of the sale, and what he received in payment.

The next allegation is paragraph 9, on p. 3:

9. Down to the 14th of July, 1877, all the defendants had given the complainants to understand that the complainants were the only creditors to whom the firm of the Emery Coal Company was indebted to any considerable amount. As late as the 16th of June, 1877, the defendant, Burrough, informed the complainants that they were the only creditors of said company—that it owed nothing to any one else. On the 14th of July, 1877, the defendant, Burrough, informed the complainants that the defendant, Emery, Sr., is a creditor of The Emery Coal Company to the amount of eight, or nine, or ten thousand dollars; the amount was expressed very indefinitely. On the 17th of July, 1877, the defendant, Emery, Sr., himself made a similar statement to the complainants, and claimed that this money the firm owed him for the capital he had advanced, and that he is not a member of the firm. This was the first intimation the complainants had from any source that said Samuel Emery, Sr., claimed to be a creditor of the Emery Coal Company.

To that Emery, Sr., answers, paragraph 9, (p. 14):

9. I deny that I, as one of the defendants, ever gave the complainants to understand that complainants were the only creditors to whom the firm of the Emery Coal Company was indebted. I believe that complainants knew, at all times since the sale by me to the Emery Coal Company, that said firm was indebted to me in more than the sum of $10,000. I know nothing as to the alleged statements made to the complainants by the defendant, Burrough. I admit that I informed the complainants at the date alleged, that I was a creditor of said company, but I deny that that was the first intimation had from any source that I claimed to be a

creditor of said company. I know nothing of the other matters alleged in said paragraph.

Burrough answers, (p. 18):

In answer to paragraph nine, I say that I did not, down to the 14th day of July, represent to the complainants that they were the only creditors of The Emery Coal Company, but aver that the complainants knew from the formation of The Emery Coal Company that Samuel Emery, Sr., was a creditor of the Emery Coal Company for purchase money to the amount of $10,000. The allegation that the complainants did not know until the 17th of July, 1877, that Samuel Emery, Sr., was a creditor of The Emery Coal Company is absolutely false and untrue, as the fact of his being a creditor has been frequently discussed between this defendant and the complainants.

Answer of Emery, Jr., (p. 21):

9. In answer to paragraph nine I say that I never have represented to the complainants that they were the only creditors of the Emery Coal Company; that the defendant, Samuel Emery, Sr., has not had control of the coal shipped to the Emery Coal Company by complainants at any time since the formation of the said partnership, nor has he ever exercised any authority or control in or about the business of the said The Emery Coal Company.

These answers fully deny the averment of the bill. What proof in the record overcomes the answers? Not one of the plaintiffs has sworn that anybody ever told one of them that they were the only creditors of the Emery Coal Company. After Mr. Emery told the plaintiff, Langdon, soon after April 1, 1876, how he had sold out, and about the notes he had received in payment, no inquiry was made of Mr. Emery, or of any of the

members of the Coal Co., as to its condition until December, 1876. The plaintiffs' witness, Hickok, relates what occurred between Burrough and Albright on that occasion (p. 146.) Twice in that interview, the witness states, in his direct examination, and once in his cross examination, that Burrough told Albright, one of the plaintiffs, that Emery, Sr., had loaned the Emery Coal Co. $10,000, or that the company owed him (Emery, Sr.,) $10,000.

The plaintiffs establish the same fact by Edward E. Burrough, a witness produced for the plaintiffs (p. 101):

130 Q. Did you ever at any time make out a written statement of the condition of the firm of the Emery Coal Company; and if so, what disposition did you make of it?

A. I made a statement at the request of Langdon and Albright & Company about the 1st of December, last year, and that statement was given to them, and they were informed at the time it was made that the net amount that was stated there to be in favor of capital account included the amount that we owed Mr. Emery, and they were also informed that the amount of stock on hand were estimated approximately.

Had Albright ever been told by Emery, Sr., that the Emery Coal Company owed no one but plaintiffs, he could have said so in his reply to direct interrogatory 11, (p. 150):

11 Q. What, at any time, did Mr. Emery say concerning any indebtedness of the firm to him?

A. He never mentioned that the firm owed him; it was never mentioned to me in any way except from time to time during the last year.

The testimony above was taken November 20, 1877

As the witness had heard of the Emery Coal Company's indebtedness to Samuel Emery "from time to time" from November, 1876, to November, 1877, and so stated upon a plain question put to him by his own counsel, the court will hardly permit its force to be explained away by a correction made after all right to cross-examine had ceased.

Burrough says (p. 102,) when testifying as witness for the plaintiffs:

"Mr. Albright was perfectly well aware all the time. that we owed Mr. Emery the money."

139 Q. How do you know that?

A. I told him so before we started business—when we borrowed from Mr. Emery to conduct the business with.

Without the above testimony the appellee must have prevailed.

Every part of the answer which is responsive to the allegations of the bill, and consequently every denial of the allegations of the bill will be taken as true, unless it is contradicted by the oaths of two witnesses, or of one witness and strong corroborating circumstances.

Alex., Ch. Pr., p. 115; 5 H. & J., 382; Mitford & Tyler, 462.

The last allegation of the bill with reference to Samuel Emery, Sr., (p. 5,) is as follows:

12. All the aforesaid doings of the defendants, Emery, Senior, Emery, Junior, Sailer, and Burrough, are parts of a scheme in which they have all been engaged to defraud the complainants. By their representation as to the financial standing of the Emery Coal Company, and particularly by their statements as to the connection

therewith of said Emery, Senior, they induced the complainants to furnish said firm large quantities of coal on credit. By setting up the claim of the said Emery, Senior, to be a creditor of said firm, (instead of a member thereof, to whom it owed nothing at all till recently, they alleged.) and nominally transferring to him said coal-yard and removing thither, as aforesaid, some two thousand tons of coal, they have fraudulently obtained from the complainants, and placed where it cannot be reached, save through the process of this court, merchandise worth at least eight thousand dollars.

To that section the answer of Mr. Emery is on p. 15:

12. I utterly deny that any doings referred to in said bill, in which I was in any way concerned, are a part of a scheme in which I, as one of said defendants, have been engaged to defraud the complainants. The charge of knowledge of fraud implied to me in the 12th paragraph of said bill is false, and complainants knew the same to be false. Complainants have never received from me any representations whatever which could have induced them to sell coal to the Emery Coal Company on credit. Complainants have never had any statement from me that could in any way induce them to believe that I was connected with said company. On the contrary, I took the most public means of advertising the fact that I had sold all my interest in said business to the said Emery Coal Company. Within two or three months after said sale and advertisement, Langdon, one of the complainants, met me and asked me to induce the Emery Coal Company to transact their business with the Citizens' National Bank, in which said Langdon was director, as I am informed. I then informed said Langdon that I had nothing whatever to do with said Emery Coal Company, and that I could only mention his request to the members of the Emery Coal Company, which I did. I have always claimed to be a creditor of said Emery Coal Company. I have never claimed to be a member of the said company. The coal yard referred to in the 12th paragraph was not nominally transferred to me, but was bought by me from said company in a legitimate business way. I never knew that the Emery

Coal Company was unable to meet its obligations until the 15th day of July, 1877. Up to said date I believed it to be solvent, and dealt with it on a legitimate business basis. Since the 16th of May I have been a retail dealer in wood and coal, and was compelled to deal with some wholesale dealer. From and after the 16th of May I purchased coal from said company, and delivered to said company some coal from my yard in exchange. Said coal was not purchased by me with any knowledge or belief that the Emery Coal Company could not meet its obligations. The total dealings in coal and wood between me and the Emery Coal Company since I resumed business will not exceed $2,305.64.

The allegations in the above paragraph are all reiterations of charges in preceding sections of the bill, and need not be further referred to, except the statement that appellant, with the other defendants, engaged in a scheme to defraud the plaintiffs, and that all the defendants, including appellant, had fraudulently obtained from plaintiffs and placed where it could not be reached except by the process of an equity court, merchandise worth $8,000.

In the 7th paragraph of the bill the complainants say:

"On the 14th day of June, 1877, and for several days afterwards, there was published in the newspapers of the city of Washington, in the District of Columbia, an advertisement purporting to be a notice that the firm of The Emery Coal Company was dissolved on the 16th day of May, 1877. To this advertisement was appended the names of C. C. Sailer, E. E. Burrough, and Samuel Emery, Junior. A copy of it is hereto appended marked Exhibit "D." The complainants had no notice of this attempted dissolution till it was published in June, and then they had shipped nearly all said coal, and had made contracts for the shipment of the remainder. By whose

authority it was published the complainants do not know. Since it was published, and quite recently, the defendant, Samuel Emery, Junior, has informed the complainants that he is still a member of said firm."

In the 12th paragraph of the bill the complainants, referring to the same matter, say:

"By their publication in June last of an ante-dated notice of dissolution, they have purposely and fraudulently made obscure their relations and responsibilities as partners, which matter is still further complicated by their more recent notice of assignment in the name of said Emery, Junior, and said Burrough, whereby the notice published in June, said Emery, Junior, appeared to have retired from the firm at that time, and they have prevented the complainants from pursuing a remedy at law since they do not know and cannot ascertain save through this court who were the members of said firm when the principal part of its indebtedness to the complainants accrued."

The object of these statements is doubtless to show that the members of the Emery Coal Company had fraudulently so confused their relations as partners as to deprive the complainants of a remedy at law against them.

The disingenuousness of the statement is shown by the fact that Burrough agreed to buy Emery, Jr., out at the *request* of Mr. Albright, one of the complainants.

Burrough says, (p. 101, Answer 209:) "Mr. Samuel Emery, Jr., at Mr. Albright's request, made an assignment to me I think in March or April, and I consummated that purchase at the same time I did with Sailer; that is, I proposed to give him $4,000 for his interest."

In his answer on p. 19, par. 10, Burrough says: "That the connection of the defendant, C. C. Sailer, with the

Emery Coal Company has at all times been known to the complainants, the time he went into said firm and the date that he retired being communicated to the complainants by this defendant."

When called by the defendants, Burrough says, (p. 180:) "In fact I bought Mr. Sailer and Mr. Samuel Emery, Jr^r, out by Mr. Joseph J. Albright's advice; he spoke of purchasing Mr. Langdon's interest, and he said I ought to get rid of my partners as he did of his."

Q. "When did you notify Mr. Langdon that you had bought Mr. Sailer out?

A. "We talked of it two or three months before it was consummated; I used to be in their office once or twice or three times a week, and it was talked of nearly every time I was there, and when it was consummated I told them.

Q. "How soon after it was done?

A. "The very day it was done; it was partly at their suggestion that this advertisement was not made until later.

Q. "What reason was given for that?

A. "Because they thought it might affect our credit, and might prevent them from getting some of our paper discounted."

On the same page Burrough explains why Samuel Emery, Jr., did not go out after the advertisement. He says:

A. "I bought him out under an agreement; that he agreed to go out at the same time, and was advertised out at the same time; I had no settlement with him; he was absent from the city I believe at the time for about a month; he went out to the Black Hills prospecting, or something of that kind, and when he came back we had some difficulty, I believe; the concern closed its doors shortly afterwards; made the assignment."

Mr. Albright was called in rebuttal, and (p. 191) he was asked:

18 Q. When did you become aware of the fact that Mr. Sailer had withdrawn from the Emery Coal Co.?

A. I think the first notice I had was the day it was published in the paper; whether Mr. Burrough showed me the advertisement, or said he was going to put it in the paper, I cannot say; I know I was surprised at its being dated back, at the time when I first saw it.

19 Q. Have you read what Mr. Burrough said about your conversation with him concerning Mr. Sailer's withdrawal?

A. Yes, sir.

20 Q. What is your recollection about that?

A. I don't remember saying anything about Mr. Sailer's withdrawal to him; he spoke several times about Mr. Emery, Jr., leaving the firm.

21 Q. Are you quite sure that you did not know of the purpose of the withdrawal of Mr. Sailer until the day the advertisement was published?

A. It was either that day or it may have been a day before; I think he showed me the notice before it was put in the paper.

Mr. Albright admits that he talked with Burrough frequently about Emery, Jr., leaving the firm.

He admits that Burrough notified him of the withdrawal of Sailer a day or two before the advertisement, and that he showed him the advertisement before it was published, and he does not deny the statement of Burrough that he advised him to buy Sailer out; we may, therefore, assume that to be true, as he certainly would have denied it if not true.

We have thus shown by the testimony of Burrough, the defendant, and Albright, the plaintiff, that these transactions which are charged in the Bill to have had a dishonest and fraudulent purpose, and to have been learned by the plaintiffs first from the newspapers, were

not only free from all fraudulent intent, but were freely and frequently talked about between Burrough and Albright before they were done, and were in fact advised by Albright.

The charge is not only disingenuous and untrue, but in the light of the testimony it is *absurd*.

The publication of the dissolution was on the 14th of June, and the dissolution took place on the 16th of May. The last coal was ordered prior to the 1st of May; the first shipment was the 2d of May, and the last the 19th of June. (See Exhibit B, p. 7.)

Mr. Albright, on p. 191, testifies that all the coal in that exhibit was ordered at one time before the 1st of May, and that they delivered no coal after the conversation on the 20th of June between himself and his partner, Mr. Barker and Samuel Emery, Sr., in which Mr. Emery refused to be responsible for the Emery Coal Company. (See pp. 190, 191, Rec.)

Of course all the members of the firm were responsible for all the goods ordered by it before dissolution, unless the order was countermanded before delivery, which was not done.

Sailer and Emery, Jr., could not, therefore, have escaped liability by the dissolution of the firm, and the plaintiffs could not by any possibility on that account lose any right to proceed against all the members of the Emery Coal Company by action at law.

The statements in the bill as to the jugglery among the parties of the Emery Coal Company as to their partnership relations was intended to give some shadow on the face of the bill to maintain the equity jurisdiction. But we have shown them to be untrue in fact, and need not therefore discuss their legal effect if true.

For three months before any testimony was taken, and ever since, all the books, accounts, paid checks, and notes, and all papers belonging to the Emery Coal Company, relating to its transactions with Emery, Sr., were in the possession of a receiver representing the plaintiffs. All of the defendants were placed upon the witness-stand, and subjected to the most searching examination by skilled counsel. The scrutiny was invited by Mr. Emery.

The result establishes a *bona fide* sale of all the stock and business of Mr. Emery as a coal dealer. There was an estimate made of the value of the whole business by two persons, one of whom was chosen by Mr. Emery and the other by the coal company. (p. 63.)

| | |
|---|---|
| Stock, fixtures and accounts were estimated at . . . . . | $35,038 23 |
| Of bills receivable, &c., Mr. Emery retained | 3,632 35 |
| | $31,405 88 |
| He presented to Burrough & Emery, Jr . | 10,235 08 |
| And received Emery Coal Co.'s notes for . | $21,170 85 |

| | |
|---|---|
| Of these notes one was payable on demand for . . . . . | $10,000 00 |
| One at 60 days for . . . . . | 4,000 00 |
| One at 90 days for . . . . . | 4,000 00 |
| One at 4 months for . . . . | 3,170 00 |
| | $21,170 00 |

See Exhibit L., A. & Co., No. 7, (pp. 205–206.)

The sale and delivery were consummated, and the notes executed and delivered in the month of April, 1876.

The testimony shows (pp. 61, 95,) that there was a net profit to Samuel Emery on his coal business of more than $10,000 up to the date of his retirement.

| | | |
|---|---|---|
| His book showed (Exhibit L., A. & Co, No. 8, p. 206) that he had received from the business . . . . . | | $107,642 29 |
| Stock on hand and bills receivable, &c. . | | 35,038 23 |
| | | $142,680 52 |
| He had paid out . . . . | $128,813 14 | |
| Retained bills receivable . | 3,632 35 | 132,445 49 |
| And presented to Burrough & Emery, Jr. . | | $10,235 03 |

The business, so turned over, was well established, had a fixed trade and good will; had no debts except what was due Mr. Emery (p. 95), and had been very profitable. All the bills receivable and book accounts bought from Mr. Emery were collected, except about $500 (p. 95), and there was a net capital in the new firm of about $16,500. It is true that Mr. Emery did not insist on immediate payment of the $10,000 note, but the exhibit taken from the books of the company (pp. 201, 202) shows that payments were made on account of the other notes:

| | |
|---|---|
| From May 15, '76, to Dec. 23, '76 . . | $4,516 66 |
| To March 1, '77 . . . . . | 2,360 65 |
| To May 31, '77 . . . . . | 1,904 65 |
| To June 30, '77 . . . . . | 1,275 02 |

So that the payments embraced in the settlement of July 2, 1877, between Mr. Emery and the coal company had actually been made and entered on the books from time to time during the preceding thirteen months.

The failure of the coal company was caused by the great decline in prices. (Answer of Burrough, see 13, p. 19, and his testimony p. 121.) Langdon, Albright & Co. were in position to know of the approaching decline. It does not appear that plaintiffs asked for any statement of the condition of the company after December, 1876, until about the time of the failure.

On May 15, 1877, Burrough agreed to pay to Sailer $8,500 for his interest, (p. 100;) and thought the business was worth $25,000 at that date.

In April, 1877, Mr. Emery loaned the Emery Coal Company his notes, one for $3,500, and another for $3,750, (pp. 68 and 69.)

These were used to pay the plaintiffs, (p. 68.)

They fell due on June 21, and Mr. Emery allowed the coal company to renew them in two notes, one for $2,500, at ten days, and the other for $4,750, at thirty days, (p. 69.)

If Mr. Emery had been advised that the Emery Coal Company was threatened with failure, would he, on June 21, have exchanged notes with it to the amount of $7,250?

The doctrine of estoppel has no bearing upon this case. If plaintiffs had asked Samuel Emery if the Emery Coal Company owed him for the purchase money, and he had informed them that it did not, and plaintiffs had been induced thereby to give the Emery Coal Company credit, the case would be different.

But although plaintiffs met Mr. Emery often, there is not a scintilla of testimony to show that any one of

them ever asked him whether the Emery Coal Company owed him or any one.

Mr. Emery testifies, (p. 167,) that he told Langdon, plaintiff, within two months after April, 1876, "how I sold out and what I took in payment, and everything in connection with the transaction between the Emery Coal Company and myself." Langdon does not deny it. He says, (p. 197:) "I remember meeting him there, but do not remember a word of the conversation that occurred there." That his memory was defective at times, (p. 198.)

Could plaintiffs have supposed, as sensible men, that the young men composing the Emery Coal Company could have purchased a business worth $45,000, and have paid cash for it?

Neither was Mr. Emery estopped by any act or omission of Burrough touching the firm's indebtedness to him. He at no time referred the plaintiffs to Burrough for information as to the amount the company owed him.

Having once told Langdon of this indebtedness he saw no necessity for a farther statement, but would have given it if asked. Besides, Burrough did inform plaintiffs in Dec., 1876, that Emery, Sr., was a creditor, as is shown by the testimony of Hickok, (pp. 146, 147,) and by the testimony of Burrough as witness for plaintiffs, (pp. 101, 102.)

Samuel Emery's losses by the failure of the Emery Coal Co. amounted to more than $15,000, part of it money loaned to pay the plaintiffs. He testifies (pp. 73, 74, 79, 82) that he had no intimation or knowledge of any bad condition of the coal company until the middle of July.

Sailer believed the firm solvent when he sold out in

May, 1877, (p. 131.) Burrough and Emery, Jr., believed the same in June, 1877, (pp. 125, 138, 140.)

It is submitted, therefore, that no allegation made by the bill touching Samuel Emery has been sustained.

That he was not secretly or openly interested in the Emery Coal Co., otherwise than as a creditor.

That he neither represented himself or knowingly permitted himself to be held out as interested in any other capacity.

That he collected what he has received on *bona fide* debts due him, and is entitled to retain the same.

We have at considerable length stated the charges of the bill and the answers thereto, and have grouped the material evidence about each point, for the purpose of showing the Court how utterly the appellants have failed to sustain the case made in the bill against the appellee. We now propose a brief discussion of the law of the case.

The bill in this case is certainly a novelty. It is not a creditor's bill, for it lacks the predigate of a judgment at law, an execution, and a return of "*nulla bona*."

A party is not permitted to resort to equity for the collection of a debt until he has exhausted his legal remedies, or unless the law courts cannot afford him a plain, adequate and complete remedy.

In England, and in some of the States, there is concurrent jurisdiction in the law and equity courts in certain cases, as fraud, accident, mistake, and account; but in the courts deriving their jurisdiction from the Constitution and laws of the United States, equity can only be resorted to where the law courts do not afford a plain, adequate and complete remedy.

Hipp *et. al. vs.* Balin *et. al.*, 19 How., 271; Obricks *vs.*

Spain, 15 Wall., at pp. 227-7; Baker *vs.* Biddle, Baldwin, 394.

Had the plaintiff, then, a plain, adequate and complete remedy at law?

The bill is filed to collect a debt which they say the Emery Coal Company owes them.

Why not sue them at law? It is not averred that the Emery Coal Company is insolvent. It is charged that two of the members of said company are irresponsible, but it is not charged that Sailer is insolvent; on the contrary, the bill says he has property; and Samuel Emery, Sr., is said in the bill to be "a person of considerable pecuniary resources."

So, upon the theory of the bill, there is no necessity for going into equity to collect the debt of the complainants.

But if the bill had charged that they were all insolvent, that would not justify a resort to equity in the first instance, that forum may only be sought to aid the collection of the judgment of a law court. The defendants were entitled to a trial by jury before a judgment was rendered against them.

The excuses set up in the 12th paragraph of the bill for a resort to equity are ingenious, but insufficient.

It is first charged that the doing of all these things by defendants Emery, Sr., Emery, Jr., Burrough and Sailer "are parts of a scheme in which they have all been engaged to defraud the complainants." By their representations as to the financial standing of the Emery Coal Company, and particularly by their statements as to the connection of Emery, Sr., therewith, they induced the complainants to furnish the firm large quantities of coal on credit. By setting up the claim of Emery, Sr., to be a creditor instead a member of said firm, and nomin-

ally transferring to him the coal yard, and removing thither two thousand tons of coal, they have fraudulently obtained from the complaints, and placed where it cannot be reached, save through the process of this court, merchandise worth at least $8,000.

Now, if all that is true, why can't the complainants get a judgment at law against them all and collect it by execution, as it is not pretended that Sailer and Emery, Sr., are not responsible?

Besides, a court of law is just as competent to deal with fraud as a court of equity.

They don't need the process of the equity court to get back their coal, for they may have an execution on their judgment to collect their money.

Besides it is none of the business of the complainants what the defendants did with the coal after they bought it, if they are good for it.

Again, the bill says that the defendants have purposely and fraudulently obscured their partnership relations, so that the complainants can't pursue their remedy at law, "since they do not know, and cannot ascertain, save through this court, who were the members of said firm when the principal part of its indebtedness to the complainants accrued."

In Brown *vs.* Swan, 11 Pet., at p. 502, the court says: "The rule to be applied to a bill seeking discovery from an interested party is, that the complainant shall charge in his bill that the facts are known to the defendant, and ought to be disclosed by him, and that the complainant *is unable to prove them by other testimony;*" and the court further says that the barrier between law and equity will not be permitted to be broken down *where the evidence could have been procured in a law court under the process of subpœna.*

In Russell *vs.* Clark, 7 Cranch, p. 89, this court says: "If certain facts essential to the merits of a claim purely legal be exclusively within the knowledge of the defendant, he may be required in a court of equity to disclose those facts, and the court having possession of the cause will proceed to determine it. But this rule cannot be abused by being employed as a mere pretext for bringing causes proper for a court of law into a court of equity. If the answer of the defendant disclose nothing, and the plaintiff supports his claim by evidence in his own possession, unaided by the confession of the defendant, the bill should be dismissed." "As the answer so far from furnishing any evidence in support of the bill, in the most explicit terms denies the whole equity of the bill. This ground of jurisdiction is therefore totally withdrawn from the case."

That this allegation was a mere pretext for bringing this case into equity is apparent from the fact that the bill does not ask discovery; it does not charge that the complainants cannot procure the knowledge from other testimony; and it does not even call upon the defendants to answer under oath.

But if it had been made in good faith and had set out what is required in a bill for discovery, the defendants' answers have, "in the most explicit terms," denied the whole equity of the bill, and in the language of the Supreme Court in Russel and Clarke, *supra*, "this ground of jurisdiction is totally withdrawn from the case"

Again, the bill says that by the pretended retirement of said Emery, Sr., and Sailer from said firm, and the claim now fraudulently set up that both of them are large creditors of said firm, they have wrongfully sought to deprive complainants of any remedy against these members of said firm who have any property.

If they have simply *pretended* to withdraw from said firm, what is to prevent the complainants from suing them at law and recovering their whole debt from them?

And, finally, it is charged that to hinder and defraud the complainants, the defendants have, in the name of the two irresponsible members, conveyed what purported to be their assets to Ross & Dean, while the principal portion of their assets being the coal fraudulently obtained from the complainants, they have transferred to the custody of Emery, Sr., and it is retained by him and treated as his own property. Why not sue them all at law, if these things be so, and collect their debt?

The complainants need not trouble themselves about this fraudulent transfer, as they have a plain and adequate remedy at law open to them.

If the bill had charged that all the defendants were *insolvent;* that the assignment to Ross & Dean was fraudulent, and that they were spiriting away the assets and were also insolvent, and that an injunction was necessary to save the assets for the creditors, there might have been some reason for a resort to equity before they obtained a judgment at law; but in the absence of such apparent necessity, the defendants were entitled to have all the questions of fact made in the bill found by a jury.

The only possible ground of equity jurisdiction in the case is the *discovery;* for it will not be pretended, if all the defendants (except the assignees) were liable for the debt of the complainants, and some of them were solvent and able to pay it, as is charged in the bill, the right is purely a legal one, and could not primarily come

into equity unless *discovery* from the defendants was *essential* to enable them to maintain their right.

As we have seen where *discovery* is sought in aid of a legal claim, it is essential to maintain the jurisdiction for relief as consequent on discovery; that the bill should allege that the facts are material to the plaintiff's case; that the *discovery* of them by the defendants is indispensable *as proof, and that the plaintiff is unable to prove such facts by other testimony.*

And if the answer wholly denies the matters of fact of which discovery is sought, the bill must be dismissed.

A bill will not be maintained for discovery when the evidence may be obtained *aliunde.*

Hurst *vs.* Hurst, 2 Wash., C. C. 127; 1 *Ibid*, 129; and see 1 Story, Eqt. Juris., sec. 64, 71, 73, 74.

The bill is not a creditor's bill, and is brought solely on behalf of the complainants, and no one else; no one comes in and asks to be made party, either plaintiff or defendant, and yet the decree distributes to the complainants, Samuel Emery, Sr., Thomas Potee, and sixteen others, creditors all of the "Emery Coal Company," the fund in the hands of the receivers realized from the assets of that company.

Upon what principle of equity jurisprudence or practice this is founded we are unable to conjecture.

Again, the 5th paragraph of the decree requires Emery, Sr., to pay to the complainants $1,235.37, being the funds in his hands, &c. In a proper case, probably Emery, Sr., might be required to account for what was in his hands, if the court found he was not entitled to it; but why pay it to the complainants any more than to the other distributees of the Emery Coal Company? Why

should not they have their *pro rata* as well as the complainants, if the court was right in distributing to them the fund in the hands of the receivers?

But again the 6th paragraph of the decree finds that Emery, Sr., is indebted to complaints in the further sum of $14,818.98, with interest from July 20th, 1879, and finds that Sailer is also liable to the complainants for the same amount, and that execution as at law may be issued against said Emery and Sailer, or either of them, in favor of the complainants to recover the said sum and interest.

Here are distinct judgments against Emery, Sr., and Sailer, not to account, but for the balance of the debt of the complainants after deducting their distributive share of the assets of the coal company and the former amount adjudged against said Emery by way of accounting for the funds in his hands belonging to said company.

The court does not find that Emery, Sr., was a member of the coal company; on the contrary it is found that he was a creditor of the company, and is made one of the distributees of the fund in the hands of the receiver.

It is not found that he was guilty of fraud upon complainants; it is not by way of accounting for money or property belonging to the company found in his hands; but because in the course of his dealings with said company they paid him moneys which it is conceded they justly owed him, a judgment is rendered against him for this large sum of money in behalf of other creditors having no better right to be paid than he.

As well might Emery, Sr., have judgments against complainants for the large debt due him by the Emery Coal Company, because they received by far the greater

part of the money collected by the coal company for coal sold by them during the whole time they were in business.

The company when it failed owed the complainants for coal sold them, and it owed Emery, Sr., for money loaned them and for coal sold them.

But before a judgment was rendered against him, Emery, Sr., had a constitutional right to a trial by jury in a law court.

See Dunphy *vs.* Kleinsmith, 11 Wall., 610.

It is conceded that where a member of a firm retires and the firm continues without change of name, or anything to put persons dealing with them on enquiry, the retiring partner is liable to persons dealing with the firm afterward, unless notice of the dissolution was published in some newspaper of general circulation in the community where they did business: and as to persons who previously dealt with the firm the notice should be brought home to them.

This doctrine has no application to this case, because there was no old firm and no dissolution.

Samuel Emery, Sr., did business alone and in his own name, and he sold out to the Emery Coal Company.

He was not required to give any notice at all, but he did publish in three newspapers his retirement from business, and that he had sold out to Burrough, Emery, Jr., and Sailer, composing the Emery Coal Company, and complainants admit that they saw the notice.

We have not seen the brief of the counsel for appellants, and don't know upon what ground they propose to stand in this court, but in the court below, after being compelled to abandon every other thing, they finally based their case upon the doctrine of estoppel.

As it is not pretended that there were any contract relations between the appellants and the appellee, the estoppel, if any, must have been "by conduct."

Bigelow on estoppel 3d edition, p. 484, says:

The cases when carefully analysed, show that all the following elements must actually or presumably be present in order to constitute an estoppel by contract:

1. There must have been a *false* represenation or concealment of *material* facts.

2. The representation must have been made with *knowledge* of the facts.

3. The party to whom it was made must have been ignorant of the truth of the matter.

4. It must have been made with the *intention* that the other party should act upon it.

5. The other party must have been *induced to act upon it.*

Let us now see whether the testimony will bring the appellee within this formula.

1. He must have been guilty of a *false* representation of *material* facts. Of the *concealment* we will treat hereafter.

What are the representatives relied upon.

Mr. Albright on p. 149,–'50 testifies:

"We sold coal to him (Emery, Sr.) quite largely in "1875; the business was continued in the same way, "and settlements were all made and paid up. In the "spring of 1876, about the 1st of April, we were noti- "fied that Mr. Sailer was coming into the business, and "I guess I talked it over previous to that with Mr. "Burrough, and at the time they closed out I had some "talk with Mr. Emery, Sr., on several occasions, and "Mr. Burrough, and as I said before *Mr. Emery, Sr.*, "*seemed to have very little information in regard to the details* "*of the business.*"

"Mr. Emery stated at that time that they were doing "a nice business, and that it had been a profitable busi- "ness." Were not these statements true?

The uncontradicted testimony of Samuel Emery, Sr., is that he commenced business October, 1874, and when he turned the business over to the new firm April 1, 1876, he had cleared $10,250, (p. 61.)

So both these statements were true.

Albright further says that Mr. Emery said "he thought "the young men could carry it on very well. The com- "pany was strong and ought to be sound." Was not this true? It will be remembered that this was at the time they were starting. They had $10,000 or $11,000 in coal and wood; good bills receivable and fixtures to the amount of $22,000 or $23,000, and a good established business which had cleared $10,000 in eighteen months.

If these statements were made by Mr. Emery they were certainly true.

These were the statements according to Mr. Albright made by Mr. Emery himself about the time he sold out to the young men.

Mr. Albright does say that Mr. Emery referred him for the most part of the detailed information to Mr. Burrough.

But in the same conversations he says, (p. 149,) "Mr. "Emery seemed to have very little information in re- "gard to the details of the business."

His whole testimony shows he relied upon Burrough and not upon Emery for information, and that he was in almost daily conference with Burrough. The opinion that Mr. Emery expressed that the young men could carry on the business very well was, of course, but an opinion, and not a statement of a fact.

There can be no doubt that Mr. Emery believed the boys could and would succeed.

Again, on p. 150 and 151, Mr. Albright speaks of meeting Mr. Emery at the Citizens' Bank late in the fall when they had a conversation. "In speaking of their having a big stock on hand he asked me what I thought they would realize on this big stock of coal on hand." He said there seemed to be a pretty good pile on hand, but there seemed to be enough to pay all they owed us, or something of that kind, but nothing was said about any indebtedness to him."

At the utmost this was but the expression of an opinion upon a subject that he did not understand so well as Mr. Albright himself.

Again, Mr. Albright, on p. 151, says that he had a conversation with Mr. Emery about the 1st of July, 1877, in which "he said he knew very little about the "state of their affairs." He said that Burrough would give me any information I wanted about the new arrangement, (*i. e.*, Sailer and Emery, Jr., going out,) and and I could rely upon anything he said.

We have already shown that Albright not only knew all about their going out, but had himself advised it.

Moreover, according to Albright, the last coal shipped to the Emery Coal Company was June 19, 1877, so that he could'nt have been injured by anything Emery said in that conversation.

Benjamin Power, a witness called by the appellants, testified on p. 163 that in 1875 he sold some coal to Mr. Emery, and that Emery then told him he had started these young men in business, and that he was the responsible party.

Mr. Emery denies this, and it is not corroborated by anybody; but it is totally immaterial whether he told

this to Power or not. It was not true in fact as all the testimony shows, and there is no evidence that it was communicated to the appellants until after this suit was brought.

So that there is no estoppel in this testimony.

Again Mr. Barker, one of the appellants, testifies on page 159 that in the fall of 1874, when Mr. Emery first started in business, he called to sell him coal. Emery said he had started business for the boys; to let them have anything they wanted and he would see it paid. Mr. Emery denies this, but it all belonged to the old business, and the plaintiffs were fully advised as to who composed the new firm.

We believe that the foregoing are all the representations charged to have been made by Mr. Emery.

As we have seen, some of them are true in fact, some are totally immaterial, and those which have the slightest materiality are denied by an equipoise if not a preponderance of testimony, and the onus is upon the appellants to make out their case by a strong preponderance of proof.

The third requirement is that the party to whom the representations were made must have been *ignorant* of the truth of the matter. We have shown that Albright knew more about the business of the Emery Coal Company than Emery did, and that he got his information from Burrough and not from Emery.

Fourth, the representations must have been made with the *intention* that the other party should act upon them.

There is not the slightest evidence that Mr. Emery ever made any representations to either of the appellants that he intended them to act on.

And fifth, the other party must *have been induced to act upon it.*

No one of the appellants testifies that they were *induced* by any representations made by Emery, Sr., to sell coal to the Emery Coal Company, except what is said by Albright on page 150 in answer to question 10. After stating that Emery said they were doing a nice and profitable business, that he had turned the business over to the young men who, he thought, could carry it on very well; that the company was strong and ought to be sound. And then stating, himself, that there was quite a large stock on hand, he says: "And on that we went ahead and sold them coal."

All the statements that he attributes to Mr. Emery in that connection were true.

So the estoppel based on the *representations* of Emery, Sr., must fail.

Now let us see as to the *concealment* of *material* facts.

"It is not enough to raise an estoppel that there was "an opportunity to speak which was not embraced; "there must have been an *imperative duty to speak.* Nor "is any duty generated by the mere fact that a man is "aware that some one may act to his prejudice if the "true state of things is not disclosed."

Bigelow on Es'p., 3d Ed., p. 503.

"These cases and those of similar character have been "recently reviewed in this court and do not need a de- "tailed examination. In all of them the silence operated "as a fraud and actually misled. In all, there was both "the specific opportunity and apparent duty to speak. "And in all, the party maintaining silence knew that "some one was relying upon that silence, and either "acting or about to act as he would not have done had "the truth been told. These elements are essential to "create a duty to speak."

Viele *v.* Judson, 82 N. Y., at p. 40;
Hill *v.* Epley *et al.*, 31 Penn. St.;
Opinion of Justice Strong on p. 334.

"The general principle now is, that where the conduct "of a party has been such as to induce action by another, "he shall be precluded afterwards from asserting to "the prejudice of that other, the contrary of that of "which his conduct has induced the belief. The pri- "mary ground of the doctrine is that it would be a "fraud in a party to assert what his previous conduct "has denied, when, on the faith of that denial, others "have acted. The element of fraud is essential either "in the intention of the party estopped or in the effect "of the evidence which he attempts to set up."

"It is only when *silence becomes a fraud* that it post- "pones."

The *concealments* of which the appellants complain are, we presume, that Mr. Emery did not formally advise the appellants before the new company began business that he would not be responsible for debts which they might contract, for at that time they had none, save to him.

There is no evidence that he even knew that the new firm proposed to deal with the appellants. They were in condition to buy in the market anywhere they chose, and the probability is that almost any general coal dealer would have been glad to sell them coal upon the usual terms in the trade.

Neither Mr. Emery nor the new firm owed the appellants anything. Then, upon what principle was he bound to tell the appellants that he would not be responsible for debts that the new firm might or might not contract in the future.

But they say that he told Barker in 1874 that he would be responsible for all the coal ordered by the

boys, and they had a right to presume that he intended to be responsible for the new firm.

In 1874 and 1875 the businees was exclusively his own business, and was done in his name alone, and when he sold out in 1876 to a new firm and retired from the business he advertised the world of this fact, and all the appellants saw the advertisement. If they wanted to deal with the new firm and were unwilling to do so except upon the credit of Emery, Sr., they should have asked him if he would be responsible.

If they had done so and he had said that he would they could have sued him upon his promise. But they did not ask him until about the 20th of June, 1877, when the company was insolvent, and although from the reports of the business which Burrough had been making to him, he then believed them in good condition he promptly said he would not be responsible for them.

And this was the *first* time when there was an obligation upon him to speak.

But, again, the appellants say that the appellee was bound to tell them that the company was indebted to him for a part of the purchase money, and why?

Neither he nor the company owed the appellants anything when the new firm started. There is no evidence that Emery knew they intended to deal with the appellants.

It may be said that in March, 1876, Burrough had made an application for coal for the year 1876 in the name of "E. E. Burrough, manager for S. Emery & Co." But there is not the slightest evidence that Mr. Emery ever heard of this application until it was put in evidence in this case.

It was an arrangement between Burrough and Albright who seems to have been coaching Burrough all the way from the beginning to the end of this business.

But as a matter of fact after the business had started Mr. Emery testifies that he did tell Mr. Langdon in a conversation on New York avenue, and again in another conversation at the citizens' National Bank all about it.

And Burrough says he told Langdon and Albright repeatedly of the indebtedness of the company to Mr. Emery.

And Hickok, the appellant's own witness, says he heard Burrough tell Albright in December, 1876, that Mr. Emery, Sr., had loaned them $10,000, which was already invested in their business, or that they owed him $10,000. (See p. 146.)

The appellants affirm *fraudulent concealment* of this fact. The *onus* is upon them to establish it, not only by the preponderance, but by strong and convincing proof.

The weight of the evidence is altogether against them. So we have a right to assume that the appellants were fully advised of the fact that the company was indebted to Mr. Emery.

The appellants in their brief below sought to charge Emery, Sr., with the representations of Burrough, because Albright testifies that Emery on one or two occasions in conversation about the business of the new firm said Burrough could tell him all about it, and on one occasion that he could rely on what Burrough said.

The testimony of both Burrough and Albright shows that Albright knew more of the business than Emery did, and that Burrough was much more communicative with Albright than with Emery, and that some at least of the most important transactions in his business were

done on the advice of Albright.

And the attempt to hold Emery responsible for what Burrough said to Albright is simply ridiculous.

The patent facts written all over this case are that when Mr. Emery started the coal business in 1874 he had had no experience in the business, and Burrough had, and he therefore entrusted to Burrough largely the management. This brought Burrough in contact with Albright, and when Mr. Emery proposed to retire and give up the business to the young men and Sailer, Albright was the trusted adviser of Burrough, who was the only one of the new firm who knew much of the business. Sailer knew nothing and Emery, Jr., very little. Burrough managed the business himself, consulting no one but Albright.

Albright knew as well as Burrough precisely the capital with which they started and how much they owed Mr. Emery, and he believed that Burrough with his coaching could manage the business, and through him he expected to find a large market for his coal. But it happened to be a disastrous year for the coal trade, and under the management of Albright Burrough had distended too widely for his capital and failed, owing the appellants a large sum of money, and owing Mr. Emery also a large sum. And having lost their money the appellants are seeking by this most extraordinary proceeding to make Emery, Sr., responsible for it.

We have discussed, perhaps at tedious length, the grounds upon which we presume the appellants base their estoppel, and have shown, we think, that they are without the shadow of foundation.

A complainant in equity can only recover upon the case made in his bill. If he claimed on the ground of

estoppel the facts on which he based it should have been set out in his bill, and a prayer for corresponding relief.

Griffin *v.* The Clinton Line Extension Railroad Company, 1 West. Law Monthly, 31;
Whaley *v.* Norton, 1 Ver., 483;
Clark *v.* Tuston, 11 Ves., 240;
Langdon *v.* Goddard, 2 Story C. C., 267.

The scheme of the bill seems to be to charge all the defendants as partners, with certain allegations of fraudulent conduct, which were doubtless inserted to make a case for equity jurisdiction.

But there are no allegations in the bill which would notify the appellee that a decree would be claimed against him upon the ground of estoppel, other than that possibly he might be estopped from denying that he was a partner in the coal company. Nor is there any prayer asking any separate accounting by him, or that he should be compelled to pay to the appellants what he had received from the coal company.

If a case had been made in the evidence for an estoppel *in pais*, no decree could be based upon it, because it is not the case made in the bill.

Upon any theory other than that of the joint liability of the appellee, with the other defendants as a partner or as a co-conspirator, he could not properly be joined with them in an action either at law or in equity.

The debt was confessedly the debt of the coal company, and if the appellee was not a member of that company, his liability could only have been collateral, and he could have been sued only after the property of the company was exhausted.

Jones *v.* Green, 1 Wall., 330.

The bill does not charge that Sailer was *insolvent non constante* the whole debt might have been made from him.

In conclusion we confidently submit that both the facts and the law are against the appellants, and the decree of the general term dismissing the bill as to the appellee must be affirmed.

JOHN W. ROSS,
S. S. HENKLE,
*Counsel for Appellee.*

EXHIBIT J. G. P., No. 9. to Auditor's Report. Filed June 13, 1879.
(Omitted from Record by mistake.)
Notes of the Emery Coal Company received by Langdon, Albright & Co. after February 1st, 1877.

| 1877. | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Febr'y | 6, | note at | 30 days, | due | Mar. | 11 | $2,500 00. | Paid. |
| " | 6, | " | 60 " | " | April | 10 | 2,500 00. | Paid. |
| " | 15, | " | 60 " | " | April | 19 | 2,500 00. | Paid. |
| " | 20, | " | 60 " | " | April | 24 | 2,500 00. | Paid. |
| Mar. | 7, | " | 2 mos., | " | May | 10 | 2,500 00. | Paid. |
| " | 12, | " | 2 mos., | " | May | 15 | 2,555 00. | Paid. |
| " | 15, | " | 2 mos., | " | May | 18 | 3,450 00. | Paid. |
| " | 22, | " | 2 mos., | " | May | 25 | 3,200 00. | Paid. |
| " | 27, | " | 2 mos., | " | May | 30 | 3,500 00. | Paid. |
| April | 11, | " | 60 days, | " | June | 13 | 1,144 00. | Paid. |
| " | 16, | " | 1 mo., | " | May | 19 | 3,500 00. | Paid. |
| May | 14, | " | 60 days, | " | July | 16 | 3,500 00. | |
| " | 12, | " | 3 mos., | " | Aug. | 15 | 2,529 16. | |
| June | 2, | " | 2 mos., | " | Aug. | 5 | 2,529 16. | |
| May | 19, | " | 3 mos., | " | Aug. | 22 | 2,731 50. | |
| " | 25, | " | 3 mos., | " | Aug. | 28 | 2,746 26. | |
| June | 5, | " | 3 mos., | " | Sept. | 8 | 1,096 26. | |
| " | 15, | " | 3 mos., | " | Sept. | 18 | 2,096 27. | |
| And check July 11, 1877 | | | | | | | 375 00. | |
| Total unpaid | | | | | | | $18,603 62. | |

107650

# Supreme Court of the United States

October Term, 1883.

No. 159.

JOHN JOSEPH ALBRIGHT, WILLIAM E. BARKER, and ANDREW LANGDON, partners under the firm-name of LANGDON, ALBRIGHT & COMPANY,

*vs.*

SAMUEL EMERY, Senior.

## SUPPLEMENTAL BRIEF FOR THE APPELLANTS.

A. S. WORTHINGTON,
Of Counsel for Appellants.

*Thomas McGill & Co., Law Printers, Washington, D. C.*

IN THE

# Supreme Court of United States.

October Term, 1883.—No. 159.

JOHN JOSEPH ALBRIGHT, WILLIAM E. BARKER, AND ANDREW LANGDON, AS FIRM OF LANGDON, ALBRIGHT & COMPANY,

*vs.*

SAMUEL EMERY, SENIOR.

## BRIEF FOR APPELLANTS IN REPLY TO BRIEF FOR THE APPELLEE.

The sole object of this memorandum is to call attention to some of the inaccuracies into which counsel for the appellee have inadvertently fallen, and to reply to the argument made by them as to the jurisdiction in equity.

### I.

### AS TO THE FACTS.

1. It is stated on page 16 of the brief that all the coal sold under the order of March 9, 1876, was delivered in April, 1876, and was paid for. Albright's testimony on page 152 is cited, overlooking altogether his statement on page 157. Exhibit J. G. P., No. 9, (printed with appellee's brief,) shows that the note for $3,500, dated April 16, 1877, which represented the "trade that ran over and was not paid for," was paid indeed; but it was paid in another note for the same amount dated May 14, 1877. (See first en-

try on page 232.) And this renewed note is the note which matured July 16, 1877.

2. On page 17 of their brief counsel have changed Barker's testimony so as to make in their favor by interpolating the words "his clerk."

3. On pages 22–3, by separating Albright's testimony from its context, he is made to say apparently that Burrough gave him no information as to the manner in which Emery's contribution to the firm was made. The context shows that what he meant, was that he was not told whether the contribution was in money or property.

4. The criticism made on pages 31 and 32 of the brief as to Albright's correction at the end of his deposition of his answer to question 11, is especially unfortunate, since Albright explained this answer in replying to the very next question, saying, "I was never informed of this other indebtedness to Mr. Emery until quite late this season (1877), in the summer," (151.)

5. On page 38 of the brief it is assumed that all the coal shipped in 1877 was ordered before the published date of Sailer's withdrawal (May 16, 1877). Albright's testimony is cited on this point. He thought there was but one order in 1877. Afterwards, before the auditor, Barker testified there were three, and the date of the last is known only to have been earlier than May 25; whether before or after May 16 nowhere appears (228). And see Burrough's testimony (102).

## II.

### The Jurisdiction in Equity.

1. There was no demurrer to the bill. Emery, indeed, adds to his answer an objection to bill as not stating a

case for equitable relief, and prays the same advantage from this defence as if the bill were demurred to; but as his answer goes to the whole bill, this attempt at a demurrer is overruled.

Story's Eq. Pl., sec. 442.
Mitford & Tyler's Eq. Pl., 411.
Basey *v.* Gallegher, 20 Wall., 670.
Equity Rule 32 of this court, adopted in court below as Equity Rule 28 of that court.

2. Answers to the whole bill having been filed by all the defendants, and depositions covering all the allegations of bill and answers having been taken, and receivers having been appointed who had converted the general assets of the Emery Coal Company, the court referred the case to the auditor to report distribution of the proceeds of those assets among the creditors of that firm according to the list appended to the assignment, (none of whom had obtained judgments at law,) which included Samuel Emery himself, (213, 10.) He was excluded only as to that part of the firm's indebtedness to him which grew out of the sale in April, 1876, (213.) This left him free to present his claim as a creditor to the extent of $6,250. He appeared before the auditor and proved his claim, (229.) The auditor allowed it, giving him his *pro rata* of the money in the hands of the receiver, the clerk and himself, (schedule G, 223; schedule K, 225.) The auditor's report was confirmed without opposition. No one appealed from the decree but Emery senior. The bill, as to him, having been dismissed in the general term, the money was distributed in accordance with the decree of the special term, and Emery took his share of it.

One of the prayers of the bill is that receivers be appointed to wind up the Emery Coal Company. It has been wound up, its assets collected, converted, distributed. No member of the firm and no creditor excepted. Therefore, if the fact that the complainants had not obtained a

judgment before filing their bill would have been a valid objection to the bill in the first instance, it was waived by all parties, and by no one more clearly than the appellee. The case is much stronger in this respect than Day *v.* Washburn, 24 How., 352, where such a conclusion was reached in the face of a similar objection. That the averment of a judgment at law in such cases is not essential to the jurisdiction in equity was expressly decided in Case *v.* Beauregard, 101 U. S., 688.

3. Counsel for appellee have bestowed great labor on the question of jurisdiction in this case, and yet have overlooked the most obvious ground of jurisdiction—the necessity for the remedy by injunction. The bill avers that defendants had given the complainants to understand down to July 14, 1877, that the complainants were the only persons to whom the Emery Coal Company was indebted in any considerable amount, sets forth the assignment, and makes it a part of the bill. (4, 5, 8, 9.) By that assignment Emery is put down as a creditor to the amount of over $14,000 and Sailer to the amount of $8,500. The assignment requires the assignees to sell the assets of the firm and distribute the proceeds *pro rata* among the creditors named. The case presented, therefor, is one of a fraud in process of commission, and the court is asked to prevent its consummation. And to such a bill it is no answer to say that the defendants or one of them is able to respond in damages at law. The remedy at law which gives compensation for a wrong is not so adequate and complete as that which prevents it altogether.

If a man is undermining my house, can he avoid an injunction unless I aver that he is not able to pay for the building? If he has obtained from me by fraud a negotiable promissory note for $500, can he be allowed to transfer it, notwithstanding my application for injunction, on the ground that he is a millionaire? If the complainants

Little v. Dewan v. Brewster 2. Wall. 195

had owned the coal and fixtures in the possession of the Emery Coal Company, and Emery by fraud had got from them an order to deliver the same to him which was about to be presented and acted upon, could he shut the doors of equity by pleading that he is "a person of considerable pecuniary resources"?

4. Even if the fraud had been consummated by the payment in full of Emery's claim of $21,170.85 before the filing of the bill, a court of equity would have been the proper forum to grant relief. The wrong complained of then would be that Emery, having induced the complainants to give credit to the Emery Coal Company by giving them, the complainants, to understand that he was not a creditor himself, had had an account against him on their books cancelled in payment of a debt due him when he so misled the complainants. In such a case the account as to the complainants would not be cancelled at all. But how are they to have it collected and applied to the payment of their indebtedness? Manifestly, only in equity, where the Emery Coal Company can be made parties, and the account between them and Emery adjusted. How is a creditor to sue at law the debtor of his debtor? (See U. S. *v.* Howland, 4 Wh., 108.)

5. The bill shows that the remedy at law was not plain, because it was impossible for the complainants to tell which of the defendants to sue. After reciting the facts, the bill says "they [the defendants Emery senior, Burrough, Sailer and Emery jr.,] have prevented the complainants from pursuing a remedy at law, since they do not know and cannot ascertain save through this court who were the members of said firm when the principal part of its indebtedness to the complainants accrued." It is submitted that this is a substantial compliance with the rule as to averments in a bill of discovery, even as that rule is

laid down on page 48 of the brief on the other side. And the facts which it is averred had made it impossible to sue at law are not denied in Emery's answer. Nor would it matter if most, or all, of the coal had been ordered before May 16, when, according to the antedated notice, Sailer retired from the firm. The notes taken in payment were nearly all dated later than that, (220.) Besides, while the notice published announced the withdrawal of Sailer and Emery jr., the assignment was in the name of Burrough and Emery jr., just as though he had not retired, (8, 9.)

When to all this is added the fraudulent combination set forth in the 12th paragraph, it would seem that there should be no difficulty in maintaining the jurisdiction in this case.

A. S. WORTHINGTON,
*of Counsel for Appellants.*